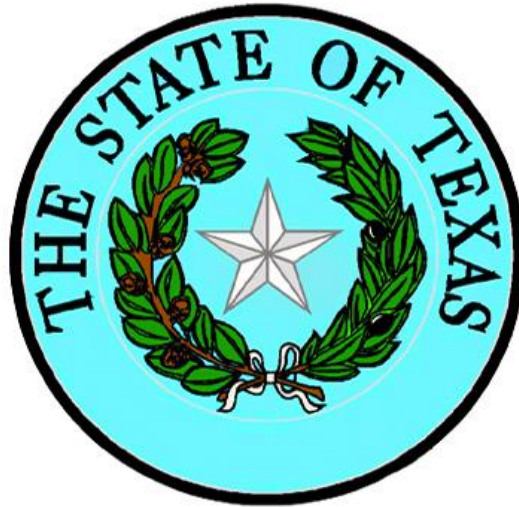


A.

Finance Commission

This page left blank intentionally.



FINANCE COMMISSION OF TEXAS

MEETING DATE **December 17, 2021**

MEETING LOCATION Finance Commission Building
William F. Aldridge Hearing Room
2601 North Lamar Boulevard
Austin, Texas 78705

CONTACT INFORMATION Phone: (512) 936-6222
Website: www.fc.texas.gov

FUTURE MEETING DATES February 18, 2022
April 15, 2022
June 17, 2022
August 19, 2022
October 21, 2022
December 16, 2022

*** The State of Texas fiscal year begins September 1 and ends August 31. The dates noted meet the minimum statutory requirement of six meetings per calendar year. Fin. Code §11.106.*

Meeting Accessibility. Under the Americans with Disabilities Act, the agency will accommodate special needs. Those requesting auxiliary aids or services should notify the Finance Commission of Texas Administrator several days prior to the meeting using the contact information above by mail, telephone, or email.

This page left blank intentionally.

FINANCE COMMISSION AGENDA

Friday, December 17, 2021
9:00 a.m.

or Upon Adjournment of the Audit Committee Meeting
Finance Commission Building
William F. Aldridge Hearing Room
2601 N. Lamar Blvd.
Austin, Texas 78705

Section A.3 will take up agenda items A1, A7, C2, and D2 with NO DISCUSSION as notated in bold and italicized.

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission of Texas agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

A. FINANCE COMMISSION MATTERS

- 1. Review and Approval of the Minutes of the October 15, 2021 Finance Commission Meeting***
2. General Public Comment
3. Consent Agenda
4. Recognition of Previous Finance Commission Members – Molly Curl, Stacy London, Lori McCool, and Paul Plunket
5. Finance Commission Operations
6. Audit Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2022 Internal Auditor's Risk Assessment and Audit Plan
 1. Department of Savings and Mortgage Lending
 2. Texas Department of Banking
 3. Office of Consumer Credit Commissioner
 - B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Appointment and Reappointment of Grant Advisory Committee Members
- 7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending***
8. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Appointment of a New Department of Savings and Mortgage Lending Commissioner
9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
10. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation

11. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089

B. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

C. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Reappointment of Rebecca Ann Motley as the Consumer Representative and the Reappointment of Amy Biggs as the Insurance Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2022 to December 31, 2023*
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review*
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas

NOTE: The Finance Commission of Texas may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

Meeting Accessibility: Under the Americans with Disabilities Act, the Finance Commission of Texas will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

MINUTES OF THE FINANCE COMMISSION MEETING Friday, October 15, 2021

The Finance Commission of Texas convened at 9:28 a.m., on October 15, 2021, with the following members present:

Finance Commission Members in Attendance:

Phillip Holt, Chairman George "Cliff" McCauley, Vice Chairman Bob Borochoff Hector Cerna Larry Long	Will Lucas Sharon McCormick Vince Puente Debbie Scanlon Laura Warren
---	--

Chairman Phillip Holt announced there was a quorum with 10 members present. *(1:08 on audio file).*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the August 20, 2021 Finance Committee Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	1:22 start of discussion
3. Consent Agenda – Items A1 and D7	Vince Puente made a motion to Approve Consent Agenda items A1 and D7. Laura Warren seconded and the motion passed.	2:13 start of discussion 2:31 Vote
4. Finance Commission Operations	No Action Required.	2:52 start of discussion
5. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2021 Fourth Quarter Investment Officer Reports 1. Texas Department of Banking 2. Office of Consumer Credit Commissioner 3. Department of Savings and Mortgage Lending	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2021 Fourth Quarter Investment Officer Reports passed.	3:44 start of discussion 3:55 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission to Take Action on the Agencies' 2021 Fourth Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Texas Department of Banking 2. Office of Consumer Credit Commissioner 3. Department of Savings and Mortgage Lending 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2021 Fourth Quarter Financial Statements passed.</p>	<p>4:09 start of discussion</p> <p>4:17 Vote</p>
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Amend the Amount of Grant Awards for the 2022-2023 Grant Cycle for the Texas Financial Education Endowment (TFEE)</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Amendment to the Amount of Grant Awards for the 2022-2023 Grant Cycle for the Texas Financial Education Endowment (TFEE) passed.</p>	<p>4:31 start of discussion</p> <p>4:42 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Final Selection of Organizations to Receive Grant Funds from the Texas Financial Education Endowment Fund</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Final Selection of Organizations to Receive Grant Funds from the Texas Financial Education Endowment Fund passed.</p>	<p>5:21 start of discussion</p> <p>8:01 Vote</p>
<p>6. Status Report on Implementation of Sunset Management Recommendations</p> <p>A. Sunset Recommendation 2.6 – "Direct the Finance Commission to minimize duplication of agency functions and promote more cost-efficient administration of the finance agencies."</p>	<p>No Action Required.</p>	<p>8:10 start of discussion</p>
<p>7. Discussion of the Condition of the Texas State Banking System.</p>	<p>No Action Required.</p>	<p>10:50 start of discussion</p>
<p>8. Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2021 for the Commissioners of the Texas Department of Banking, Office of Consumer Credit Commissioner and the Department of Savings and Mortgage Lending</p>	<p>Laura Warren made a motion to Approve the Accomplishment Reports for Fiscal Year 2021 for the Commissioners of the Texas Department of Banking, Office of Consumer Credit Commissioner and the Department of Savings and Mortgage Lending. Sharon McCormick seconded and the motion passed.</p>	<p>11:06 start of discussion</p> <p>11:19 Vote</p>
<p>9. Status Report from the Search Committee on the Process to Recommend Candidates for Consideration to Fill the Position of Department of Savings and Mortgage Lending Commissioner</p>	<p>No Action Required.</p>	<p>11:52 start of discussion</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
10. Discussion of and Possible Vote to Take Action on the Selection of an Executive Recruiting Service to Conduct a Search for Additional Qualified Candidates to Fill the Position of Department of Savings and Mortgage Lending Commissioner	No Discussion.	n/a
11. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Appointment of a New Texas Department of Savings and Lending Commissioner	No Discussion.	n/a
12. Discussion of and Possible Vote to Take Action Regarding Personnel Matters to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberation with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff	No Discussion.	n/a
13. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	No Discussion.	n/a
14. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation	No Discussion.	n/a
15. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089	No Discussion.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
B. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	13:36 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
C. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	40:43 start of discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, and Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review	<p>Vince Puente made a motion to Amend the Adoption of Amendments to 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, and Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review. Bob Borochoff seconded and the motion passed.</p> <p>Vince Puente made a motion to Approve the Adoption of Amendment to 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, and to Reconsider the Amendment to Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review, as Amended. Bob Borochoff seconded and the motion passed.</p>	<p>1:02:50 start of discussion</p> <p>1:38:54 Vote on motion to amend adoption</p> <p>1:40:34 Vote on motion to approve adoption as amended</p>
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a Repeal in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review	Will Lucas made a motion to Approve the Adoption of Amendments and a Repeal in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Reviews. Debbie Scanlon seconded and the motion passed.	<p>1: 41:06 start of discussion</p> <p>1:42:09 Vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas</i></p>	No Discussion.	n/a
D. Department of Savings and Mortgage Lending		
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; e) Legislative Activities	No Action Required.	1:43:27 start of discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Subchapter B, Concerning Licensing, Resulting from Rule Review	Vince Puente made a motion to Approve the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Subchapter B, Concerning Licensing, Resulting from Rule Review. Laura Warren seconded and the motion passed.	2:14:06 start of discussion 2:19:26 Vote
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Subchapter B, Concerning Licensing, Resulting from Rule Review	Larry Long made a motion to Approve the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Subchapter B, Concerning Licensing, Resulting from Rule Review. Sharon McCormick seconded and the motion passed.	2:19:46 start of discussion 2:22:12 Vote
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Concerning Texas Residential Mortgage Loan Companies	Will Lucas made a motion to Approve the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Concerning Texas Residential Mortgage Loan Companies. Laura Warren seconded and the motion passed.	2:22:39 start of discussion 2:24:14 Vote
5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators	Laura Warren made a motion to Approve the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators. Debbie Scanlon seconded and the motion passed.	2:24:38 start of discussion 2:27:43 Vote
6. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 52, Concerning Department Administration	Will Lucas made a motion to Approve the Adoption of New Rules in 7 TAC, Part 4, Chapter 52, Concerning Department Administration. Larry Long seconded and the motion passed.	2:28:03 start of discussion 2:13:16 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of a New Rule and the Repeal of 7 TAC §76.95, Concerning Fee for Special Examination or Audit	<i>On Consent Agenda – Item D7</i> This item Approved on the Consent Agenda.	n/a
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans	Laura Warren made a motion to Approve the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans. Will Lucas seconded and the motion passed.	2:31:40 start of discussion 2:48:31 Vote
9. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a

Chairman Phillip Holt called for an Executive Session at 12:27p.m. (2:49:16 *on the audio file*). The open meeting resumed at 12:50 p.m. (2:49:49 *on the audio file*).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
Executive Session		
10. Discussion of and Possible Vote to Take Action on the Selection of an Executive Recruiting Service to Conduct a Search for Additional Qualified Candidates to Fill the Position of Department of Savings and Mortgage Lending Commissioner	No Action Taken.	n/a
11. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Appointment of a New Texas Department of Savings and Mortgage Lending Commissioner	No Action Taken.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 12:50 p.m. (2:50:03 *on the audio file*).

Phillip Holt, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Ruth Wright, Executive Assistant
Finance Commission of Texas

This page left blank intentionally.

Finance Commission of Texas

Consent Agenda

December 17, 2021

A. Finance Commission Matters

1. Review and Approval of the Minutes of the October 15, 2021 Finance Commission Meeting
7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending

C. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Reappointment of Rebecca Ann Motley as the Consumer Representative and the Reappointment of Amy Biggs as the Insurance Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2022 to December 31, 2023

D. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review

This page left blank intentionally.

A. FINANCE COMMISSION MATTERS

7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending

PURPOSE: The purpose of the amendments to 7 TAC Chapter 153 is to implement changes relating to electronic disclosures and out-of-state financial institutions.

RECOMMENDED ACTION: The Joint Financial Regulatory Agencies request that the Finance Commission approve the adoption of amendments to 7 TAC Chapter 153.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 153.

Title 7. Banking and Securities
Part 8. Joint Financial Regulatory Agencies
Chapter 153. Home Equity Lending

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") adopt amendments to §153.1 (relating to Definitions), §153.5 (relating to Two Percent Fee Limitation: Section 50(a)(6)(E)), §153.12 (relating to Closing Date: Section 50(a)(6)(M)(i)), §153.13 (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii)), §153.17 (relating to Authorized Lenders: Section 50(a)(6)(P)), §153.22 (relating to Copies of Documents: Section 50(a)(6)(Q)(v)), §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)), §153.45 (relating to Refinance of an Equity Loan: Section 50(f)), and §153.51 (Consumer Disclosure: Section 50(g)) in 7 TAC, Chapter 153, concerning Home Equity Lending.

The commissions adopt the amendments to §153.5, §153.12, §153.13, §153.17, §153.22, §153.26, §153.45, and §153.51 without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5690).

The commissions adopt the amendments to §153.1 with changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5690).

The commissions received no official comments on the proposal.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purposes of the rule changes to 7 TAC Chapter 153 are: (1) to specify requirements for electronic

disclosures, and (2) to describe Section 50's applicability to out-of-state financial institutions.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received one informal precomment on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

Amendments to §153.1 add definitions and statutory citations for the terms "E-Sign Act" (referring to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006) and "UETA" (referring to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322). The terms "E-Sign Act" and "UETA" provide a concise way to refer to these two statutes, and are used throughout this adoption in connection with electronic disclosures. Amendments throughout §153.1 also renumber other definitions accordingly.

Based on input from staff of the *Texas Register*, changes have been made to the definitions of "Fair market value" and "Preclosing disclosure" in §153.1(10) and (15), to conform to letter case conventions used for other defined terms.

Amendments to §153.5 revise the title to this section to conform to letter case conventions used in other rules. In addition, citations to the definition of "interest" in §153.1 will be updated to reflect the renumbering described in the previous paragraph.

Amendments to §153.12 relate to oral and electronic loan applications. Section 50(a)(6)(M)(i) provides that a home equity loan closing must occur at least 12 days after the owner "submits a loan application to the lender." New §153.12(3) explains that a loan application may be submitted electronically in accordance with state and federal law governing electronic disclosures, with references to the UETA and the E-Sign Act. These amendments respond to an informal precomment recommending amendments to §153.12 on electronic disclosures. An amendment to §153.12(2) also replaces the word "given" with "submitted," to be consistent with Section 50(a)(6)(M)(i).

An amendment to §153.13 describes requirements for providing an electronic copy of the preclosing disclosure. Section 50(a)(6)(M)(ii) of the Texas Constitution requires the lender to provide the owner with a copy of the loan application and a final itemized disclosure of amounts that will be charged at closing. The current interpretation at §153.13 refers to these items as the "preclosing disclosure." New §153.13(4) explains that the lender may provide the preclosing disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, and includes references to the UETA and the E-Sign Act.

The amendment to §153.13 responds to a request that the commissions received in September 2020, while the commissions

were conducting a rule review of Chapter 153. As a result of the rule review, the commissions amended §153.22 to specify that the lender may provide signed documents electronically in accordance with state and federal law. In an official comment, a stakeholder recommended either: (1) adopting a new section to specify that the lender may electronically deliver all notices, disclosures, and documents to the property owner, or (2) amending Chapter 153's individual sections on required disclosures to specify that the lender may electronically deliver each disclosure. Although the commissions and the agencies generally do not object to the use of electronic disclosures, the commissions received this suggestion too late in the rulemaking process to include the proposed changes in the October 2020 adoption of rule review amendments. The commissions indicated that the agencies would revisit this issue in the future. After reviewing the request, the commissions believe that it is appropriate to amend each section of Chapter 153 requiring disclosures individually. This will help ensure that Chapter 153 remains clear with respect to which constitutional provision is interpreted by each section of Chapter 153.

In addition, an informal precomment recommended that §153.13 (and other sections in this adoption) consistently refer to both electronic signatures and delivery of electronic documents, when describing requirements under state and federal law. In response to this precomment, the new text throughout this adoption refers to both of these sets of requirements.

An amendment to §153.17 describes Section 50's applicability to out-of-state financial institutions. Section 50(a)(6)(P) of the Texas Constitution lists the entities that are authorized to make home equity loans,

and includes "a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States." New §153.17(2) specifies that for purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a financial institution described by Texas Finance Code, §201.101(1)(A)-(D) that is chartered under the laws of another state and does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102. The financial institutions described by Texas Finance Code, §201.101(1)(A)-(D) are banks (including savings banks), savings and loan associations, and credit unions.

The amendment to §153.17 responds to a request that the agencies received from an out-of-state bank in March 2021. The request asks whether a bank organized under the laws of another state may make a home equity loan under the Texas Constitution. The commissions believe that new §153.17(2) appropriately answers this question by referring to provisions of the Texas Finance Code that govern out-of-state financial institutions in Texas.

In an informal precomment, a stakeholder recommended deleting the phrase "or the United States" and adding an exception for institutions doing business under the laws of the United States. The stakeholder argued that this text creates an inconsistency because institutions doing business under the laws of the United States are not chartered under the laws of a state. The commissions do not believe that the adopted amendment to §153.17 creates an inconsistency. The amendment uses the word "includes," and does not suggest that the listed state-

chartered institutions are the entire population of financial institutions encompassed by Section 50(a)(6)(P). The commissions do not believe that the stakeholder's recommended change would clarify the text, and have not included it in the current adoption. However, for clarity, the adopted amendment to §153.17 includes the phrase "state-chartered" before "financial institution."

An amendment to §153.22 revises references to the UETA and the E-Sign Act, to refer to these statutes consistently with other sections in this adoption.

An amendment to §153.26 describes requirements for electronically signing the acknowledgment of fair market value. Section 50(a)(6)(Q)(ix) of the Texas Constitution requires the lender and the owner to sign a written acknowledgment of the fair market value of the homestead property. New §153.26(4) explains that the owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this adoption.

An amendment to §153.45 describes requirements for providing an electronic copy of the refinance disclosure. Section 50(f)(2)(D) of the Texas Constitution requires the lender to provide a refinance disclosure to the owner if the owner applies for a refinance of a home equity loan to a non-home-equity loan. New §153.45(4)(E) explains that the lender may provide the refinance disclosure electronically in accordance with state and federal law governing electronic signatures and delivery

of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this adoption.

An amendment to §153.51 describes requirements for providing an electronic copy of the consumer disclosure. Section 50(g) of the Texas Constitution requires the lender to provide a consumer disclosure to the owner at least 12 days before closing a home equity loan. New §153.51(2) explains that the lender may provide the consumer disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this adoption.

The rule changes are adopted under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional provisions affected by the adoption are contained in Texas Constitution, Article XVI, §50. No statute is affected by this adoption.

Chapter 153. Home Equity Lending

§153.1. Definitions

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

(1) - (6) (No change.)

(7) E-Sign Act--the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006.

(8) ~~(7)~~ Equity loan--An extension of credit as defined and authorized under the provisions of Section 50(a)(6).

(9) ~~(8)~~ Equity loan agreement--the documents evidencing the agreement between the parties of an equity loan.

(10) ~~(9)~~ Fair market value [~~Market Value~~]~~]~~--the fair market value of the homestead as determined on the date that the loan is closed.

(11) ~~(10)~~ Force-placed insurance--insurance purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.

(12) ~~(11)~~ Interest--As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time.

(13) ~~(12)~~ Lockout provision--a provision in a loan agreement that prohibits a borrower from paying the loan early.

(14) ~~(13)~~ Owner--A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(15) ~~(14)~~ Preclosing disclosure [~~Disclosure~~]~~]~~--The written itemized disclosure required by Section 50(a)(6)(M)(ii).

(16) ~~[(45)]~~ Two percent limitation--the limitation on fees in Section 50(a)(6)(E).

(17) UETA--the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322

§153.5. Two Percent Fee Limitation ~~[percent fee limitation]~~: Section 50(a)(6)(E)

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two percent of the original principal amount of the extension of credit, excluding fees for an appraisal performed by a third party appraiser, a property survey performed by a state registered or licensed surveyor, a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law, or a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(1) - (2) (No change.)

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(12) ~~[\$153.1(11)]~~ of this title (relating to Definitions) are not fees subject to the two percent limitation.

(A) - (B) (No change.)

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest under

§153.1(12) ~~[\$153.1(11)]~~ of this title are fees subject to the two percent limitation.

(5) (No change.)

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(12) ~~[\$153.1(11)]~~ of this title are fees subject to the two percent limitation.

(7) (No change.)

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(12) ~~[\$153.1(11)]~~ of this title, are fees subject to the two percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, flood zone determination, tax certificate, inspection, or appraisal management services.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse to maintain an equity loan that are not interest under §153.1(12) ~~[\$153.1(11)]~~ of this title are fees subject to the two percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(10) - (11) (No change.)

(12) Charges to Service. Charges paid by an owner or an owner's spouse for a party to service an equity loan that are not interest under §153.1(12) ~~[\$153.1(11)]~~ of this title are fees subject to the two percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(13) - (20) (No change.)

§153.12. *Closing Date:* Section 50(a)(6)(M)(i)

An equity loan may not be closed before the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. One copy of the required consumer disclosure may be provided to married owners. For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure is the first day of the 12-day waiting period. The equity loan may be closed at any time on or after the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure.

(1) (No change.)

(2) A loan application may be submitted [given] orally ~~[or electronically]~~.

(3) A loan application may be submitted electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

§153.13. *Preclosing Disclosures:* Section 50(a)(6)(M)(ii)

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the preclosing disclosure to the owner or the lender may modify the previously provided preclosing disclosure on the date of closing.

(1) - (3) (No change.)

(4) The lender may provide the preclosing disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(5) [(4)] Bona fide emergency.

(A) - (B) (No change.)

(6) [(5)] Good cause. An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists.

(A) - (C) (No change.)

(7) [(6)] An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(8) [(7)] The owner maintains the right of rescission under Section

50(a)(6)(Q)(viii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.

§153.17. Authorized Lenders: Section 50(a)(6)(P)

An equity loan must be made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this section; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; a person who is related to the homestead owner within the second degree of affinity and consanguinity; or a person regulated by this state as a mortgage banker or mortgage company.

(1) An authorized lender under Texas Finance Code, Chapter 341 must meet both constitutional and statutory qualifications to make an equity loan.

(2) For purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a state-chartered financial institution described by Texas Finance Code, §201.101(1)(A)-(D) that:

(A) is chartered under the laws of another state; and

(B) does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102.

(3) [(2)] A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans for purposes of Section 50(a)(6)(P)(ii). Loan correspondents to a HUD-approved mortgagee are not authorized lenders of equity loans unless qualifying under another provision of Section 50(a)(6)(P).

(4) [(3)] A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage company for purposes of Section 50(a)(6)(P)(vi). A person who is registered under Texas Finance Code, Chapter 157 is a person regulated by this state as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

(5) [(4)] A person who is licensed under Texas Finance Code, Chapter 342 is a person licensed to make regulated loans for purposes of Section 50(a)(6)(P)(iii). If a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), then the person must obtain a license under Texas Finance Code, Chapter 342 in order to be authorized to make an equity loan under Section 50(a)(6)(P)(iii).

§153.22. Copies of Documents: Section 50(a)(6)(Q)(v)

At closing, the lender must provide the owner with a copy of the final loan

application and all executed documents that are signed by the owner at closing in connection with the equity loan.

(1) - (2) (No change.)

(3) A lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA [~~Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322,~~] and the [~~federal~~] E-Sign Act [~~15 U.S.C. §§7001-7006,~~] include requirements for electronic signatures and delivery.

§153.26. Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)

The owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made.

(1) - (3) (No change.)

(4) The owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

§153.45. Refinance of an Equity Loan: Section 50(f)

A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of Section 50, may not be secured by a valid lien against the homestead unless either the refinance of the debt is an extension of

credit described by Subsection (a)(6) or (a)(7) of Section 50, or all of the conditions in Section 50(f)(2) are met.

(1) - (3) (No change.)

(4) Refinance Disclosure. To meet the condition in Section 50(f)(2)(D), the lender must provide the refinance disclosure described in Section 50(f)(2)(D) to the owner on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed.

(A) - (D) (No change.)

(E) The lender may provide the refinance disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(F) [(E)] One copy of the required refinance disclosure may be provided to married owners.

(G) [(F)] The refinance disclosure is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan or refinance. A lender may supplement the refinance disclosure to clarify any discrepancies or inconsistencies.

(H) [(G)] A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph.

(1) [~~(H)~~] The Finance Commission will publish a Spanish translation of the refinance disclosure on its website. A lender whose discussions with the owner are conducted primarily in Spanish may provide the Finance Commission's Spanish translation to the owner, although the Spanish translation is not required by Section 50(f)(2).

§153.51. Consumer Disclosure: Section 50(g)

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) (No change.)

(2) The lender may provide the consumer disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(3) [~~(2)~~] Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(4) [~~(3)~~] A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(5) [~~(4)~~] A lender whose discussions with the borrower are conducted primarily in Spanish for a closed-end loan may rely on the translation of the consumer notice developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

(6) [~~(5)~~] If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on November 5, 2021, and December 17, 2021.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies

B.

**Department of Savings and
Mortgage Lending**

This page left blank intentionally.

B. Department of Savings and Mortgage Lending

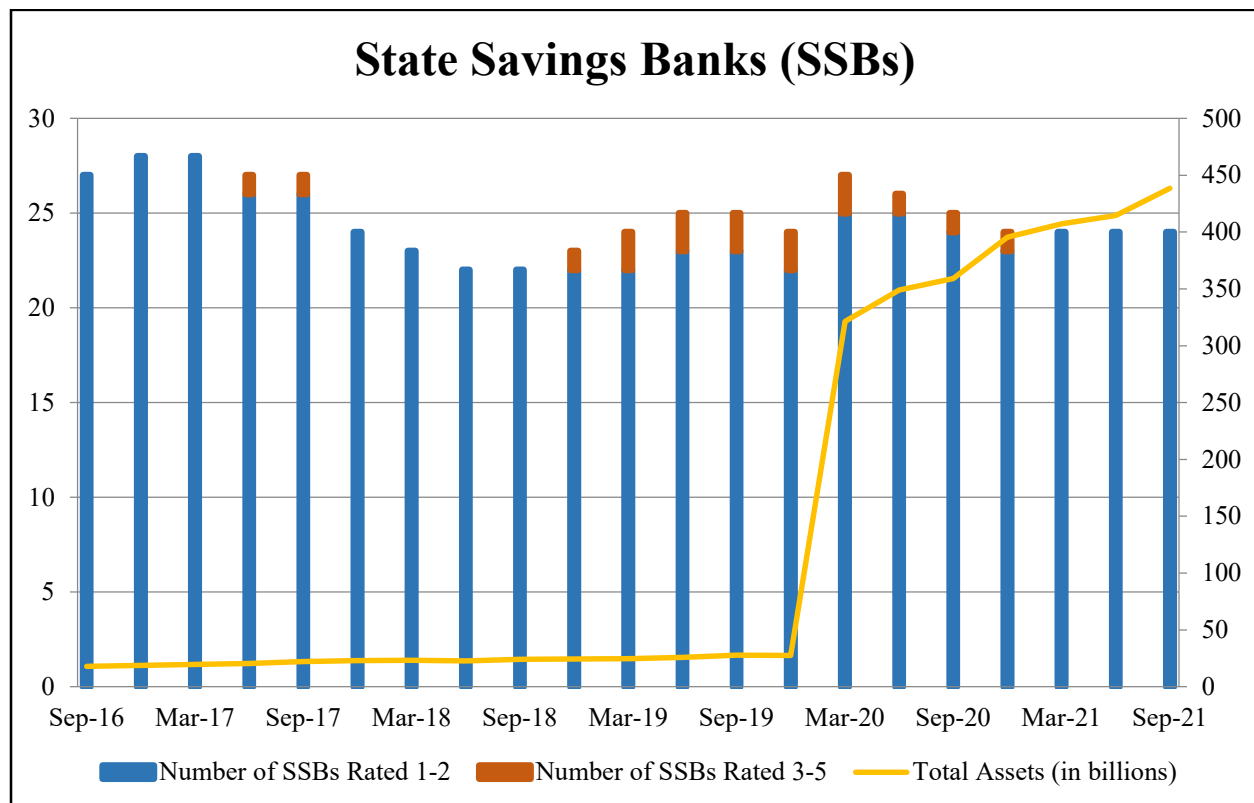
1. **Industry Status and Departmental Operations:** a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities

a) Thrift Regulation Division Activities

Industry Status

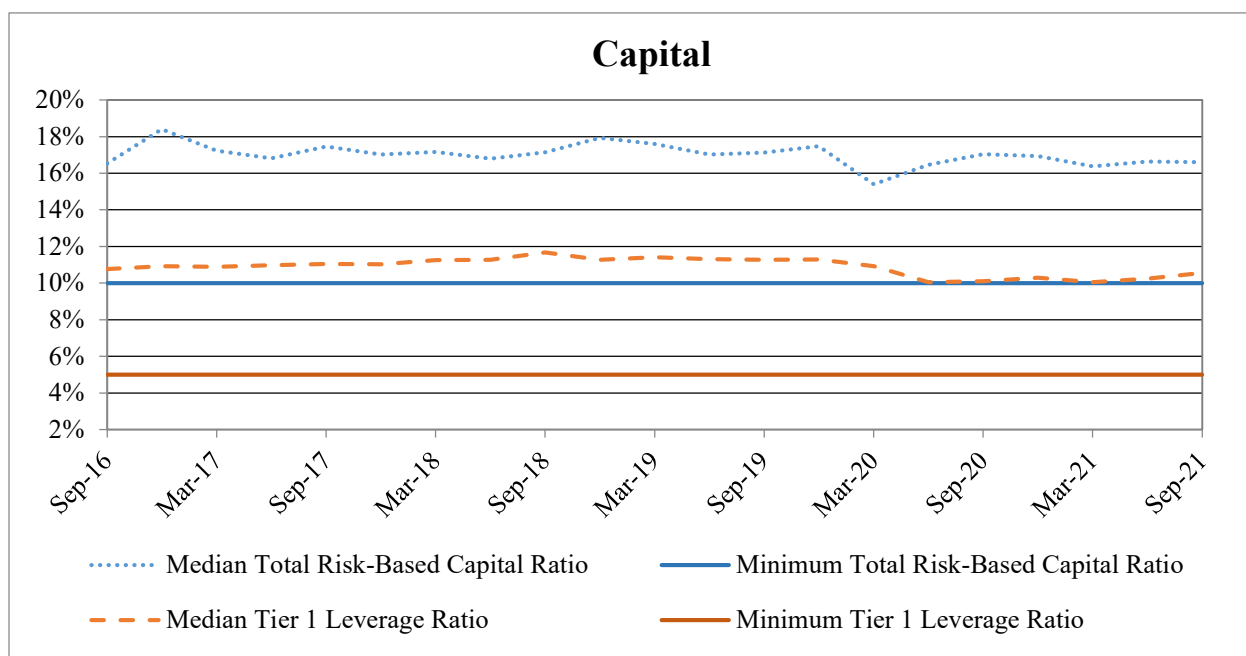
The Department continues to monitor various local, state, and national data sources to understand best the risks facing the industry and individual savings banks.

The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry consist of 24 state savings banks with assets totaling \$438.4 billion as of September 30, 2021. The industry remains sound with all banks being well rated. As of September 30, 2021, no supervisory actions are in place.

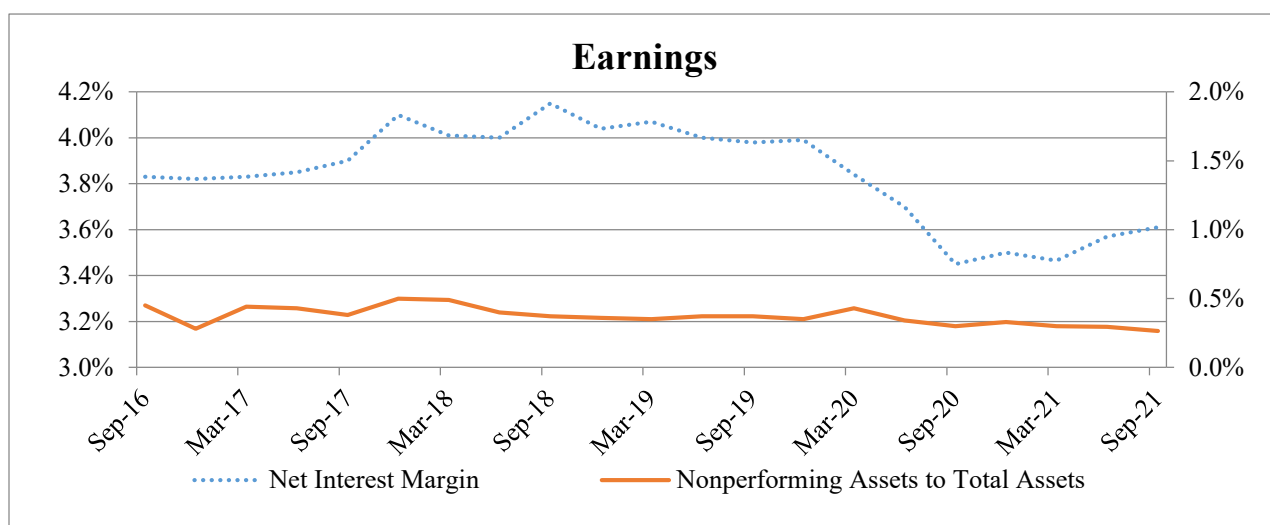


All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and national economic environment.

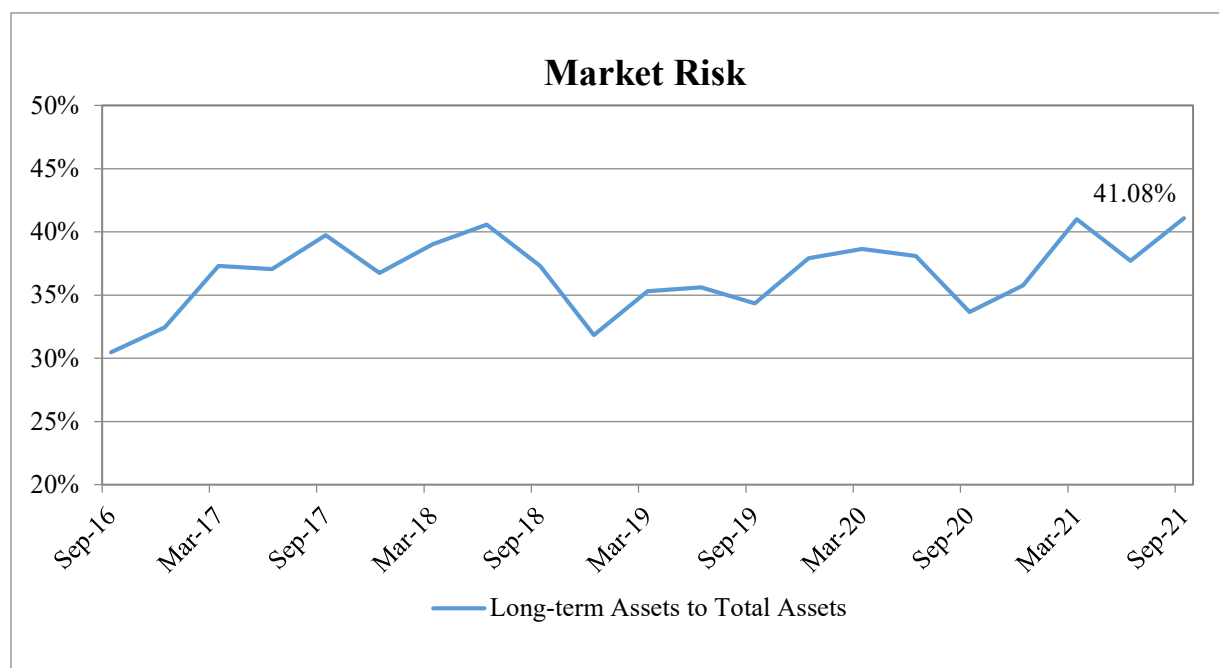
Bank capital performs several very important functions, including absorbs losses, promotes public confidence, helps restrict excessive asset growth and provides protection to the depositors. Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress. As of September 30, 2021, all SSBs remain well above regulatory capital minimums. The portfolio median total risk-based capital ratio and median leverage capital protection have remained generally consistent and are now 16.60% and 10.56%, respectively.



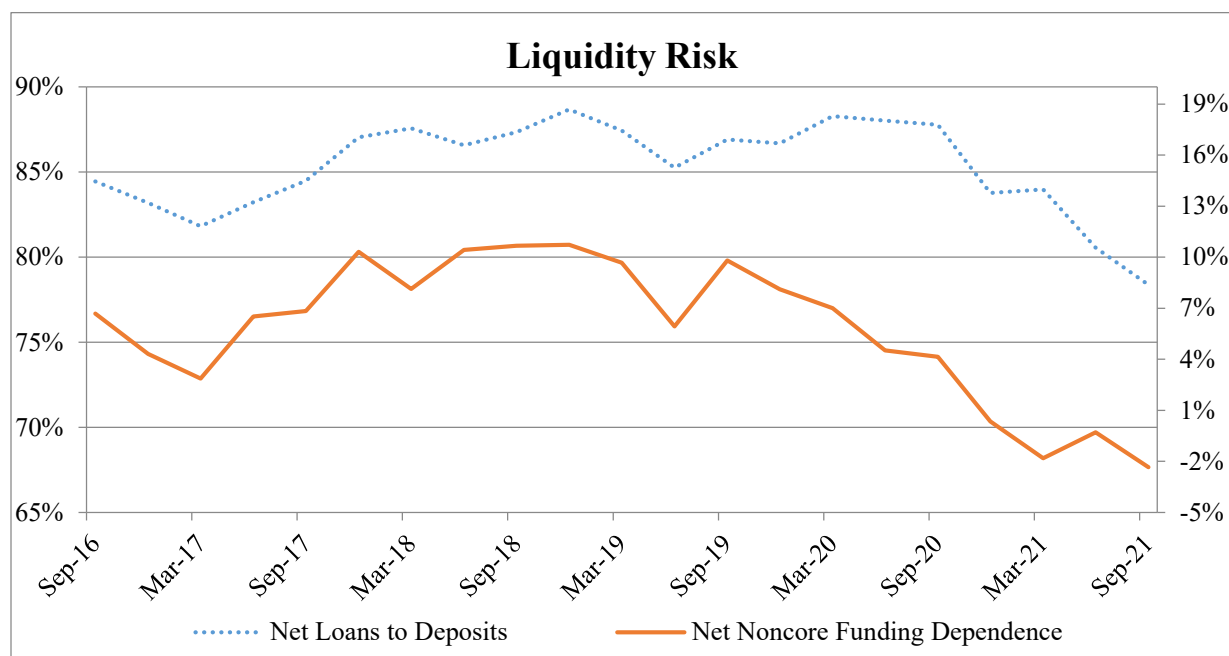
Earnings is the initial safeguard against the risk of engaging in the banking business, and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management's strategic initiatives. The net interest or profit margin is 3.61%. Non-performing asset levels remain low at 0.27% of total assets.



Market risk primarily reflects exposures to changing interest rates over time. Long-term asset exposure can be an indicator of the degree of market risk taken by a state savings bank. As of September 30, 2021, long-term assets to total assets ratio increased to 41.08%.



Liquidity risk reflects the bank's ability to fund assets and meet financial obligations under various scenarios, including adverse conditions. Liquidity risk continues to decline. The Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies, is negative 2.35%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is 78.39%.



Thrift Examination Activity Report

On-site examination activities have resumed on a limited basis.

Thrift Supervision Activity Report

The Thrift Supervision section continues to receive and process various requests for approval, including branch, subsidiary, and holding company applications.

An application to charter a Texas savings bank to be named Cornerstone Capital Bank, SSB, Houston, and an application to merge The Roscoe State Bank, Roscoe, Texas with and into Cornerstone Capital Bank, SSB, were each received on June 12, 2021, and both applications are under review.

Outreach and Training

On October 7, 2021, Interim Commissioner Trotti spoke on the Regulatory Panel at the Southwest Association of Bank Counsel's 2021 Annual Legal Conference in San Antonio, Texas. The conference covered legal issues affecting the day-to-day management of banks.

b) Mortgage Regulation Division Activities

Industry Status

The number of licensed/registered mortgage entities in an approved status with the Department continues to increase.

The following table represents the growth in the number of licensees/registrations and branch locations in approved status from October 31, 2020, to October 31, 2021.

License/Registration Type	Approved Count as of		% Change
	10/31/2020	10/31/2021	
Mortgage Banker	415	429	3.37%
Mortgage Company	1,676	1,954	16.59%
Residential Mortgage Loan Servicer	214	225	5.14%
Independent Contractor Company	208	243	16.83%
Credit Union Subsidiary Organization	3	3	0.00%
Auxiliary Mortgage Loan Activity Company	3	4	33.33%
Financial Services Company	0	0	0.00%
<i>Subtotal Entity Licenses/Registrations</i>	2,519	2,858	13.46%
Mortgage Banker Branches	3,328	4,074	22.42%
Mortgage Company Branches	935	1,138	21.71%
Credit Union Subsidiary Organization Branches	2	2	0.00%
<i>Subtotal Branch Licenses/Registrations</i>	4,265	5,214	22.25%
Mortgage Loan Originator	33,505	47,318	41.23%
<i>Subtotal Individual Licenses</i>	33,505	47,318	41.23%

Licensing Activity Report

In September and October 2021, the Mortgage Licensing section processed 3,476 applications, approving 99 mortgage entities, 339 branch offices, and 2,592 residential mortgage loan originators licenses and registrations. The remaining 446 applications were either withdrawn by applicant or denied by the Department.

The renewal period for mortgage licensees/registration, November 1 - December 31, 2021, is currently underway. Companies that have not filed mortgage call reports or have other outstanding deficiencies and individuals who have not completed the required continuing education will not be able to submit a renewal until the issues are resolved.

Due to higher than normal volume relating to renewals, the Nationwide Mortgage Licensing Systems and Registry (NMLS) has been experiencing periodic outages and currently stability issues. These outages and issues have been affecting the mortgage entities and residential mortgage loan originators' ability to access and submit records in NMLS and the Department's ability to access and review those records.

Mortgage Examination Activity Report

From September 1, 2021, to October 31, 2021, the Mortgage Examination section conducted 71 examinations covering 710 individual licensees. Compared to the same reporting period in FY2021, the overall number of examinations conducted was 21% lower (86 versus 71), however, the number of individual licensees examined was 49% higher (476 versus 710) due to more of the examined entities in FY22 having greater than 10 sponsored mortgage loan originators.

The examinations revealed violations related to unlicensed independent loan processors, unlicensed residential mortgage loan originators, inadequate recordkeeping, failure to maintain adequate policies and procedures (e.g. Anti-Money Laundering Programs, Identity Theft Prevention Programs), non-compliant social media advertisements, and non-compliant Conditional Qualification/Conditional Approval Letters.

Outreach and Training

On October 12, 2021, Director of Mortgage Regulation William Purce provided an in-person presentation to the San Antonio Texas Mortgage Bankers Association. The presentation discussed: (1) the staffing changes within the Department; (2) current licensing issues, (3) mortgage examination issues; (4) common complaint issues; and (5) the upcoming new regulations.

On October 19, 2021, the Mortgage Regulation Division held its monthly Mortgage Industry Emerging Issues Call. The topics discussed during the call included the new Mortgage Compliance Guide, the renewal cycle, the new proposed regulations, and the Rocket Mortgage advertising settlement.

c) Operations Division Activities

Risk Management

Mortgage and thrift examinations field staff perform on-site activities at a regulated entity's request.

The Department's staff prepared and submitted the annual report on the Department's FY2021 expenditures for risk management activities to the State Office of Risk Management (SORM). The report, also known as SORM 200, is used by SORM to capture costs associated with agency risk management programs and compile the administrative costs of risk management, in accordance with Section 412.053 of the Texas Labor Code.

The SORM on-site consultation and walk-through was performed on November 18, 2021. The report can be found elsewhere in the packet.

Accounting, Budget, and Financial Reporting

Staff is working on closing out the first quarter of fiscal year 2022.

As a self-directed semi-independent agency, the Department of Savings and Mortgage Lending submitted annual financial information required under Finance Code, Section 16.005(c), for fiscal year 2021, to oversight agencies and members of the legislature.

Legislative Activity – Staff is reviewing Special Session bills for fiscal impact on the agency and the regulated industries.

Audit

The internal auditors Garza/Gonzales and Associates have completed the FY2022 Risk Assessment and proposed audit plan. The report can be found elsewhere in the packet.

Human Resources

As of November 30, 2021, the Department was staffed at 57 regular full-time and one part-time employees. During November, the Department had one separation – an Administrative Assistant.

The Department is also utilizing the services of four temporary workers – one Editor, two License and Permit Specialists, and one Legal Assistant.

Below is the status of the Department's vacancies:

Vacancy Status	
Commissioner	FC Search Committee
Financial Examiner V – Thrift - 2	Collecting and reviewing applications, interviewing candidates
Financial Examiner VI/VII – Thrift - 3	
Attorney III/IV - Thrift	Collecting and reviewing applications
Financial Examiner I-II – Mortgage – 2	

CAPPS HR/Payroll Implementation – The Department's staff attended meetings and prepared and submitted the required configuration materials to the CPA's deployment team.

Outreach and Training

The quarterly agency-wide meeting and training was held virtually on October 27, 2021. It included agency and division updates, sessions on Information Resources and Wellness topics, as well as presentations on Open Records, Business Writing, and Inclement Weather Procedures.

During November 2021, the Institute of Organizational Excellence conducted the biannual Survey of Employee Engagement (SEE). The Department achieved a score of 388 and a participation rate of 96.6%.

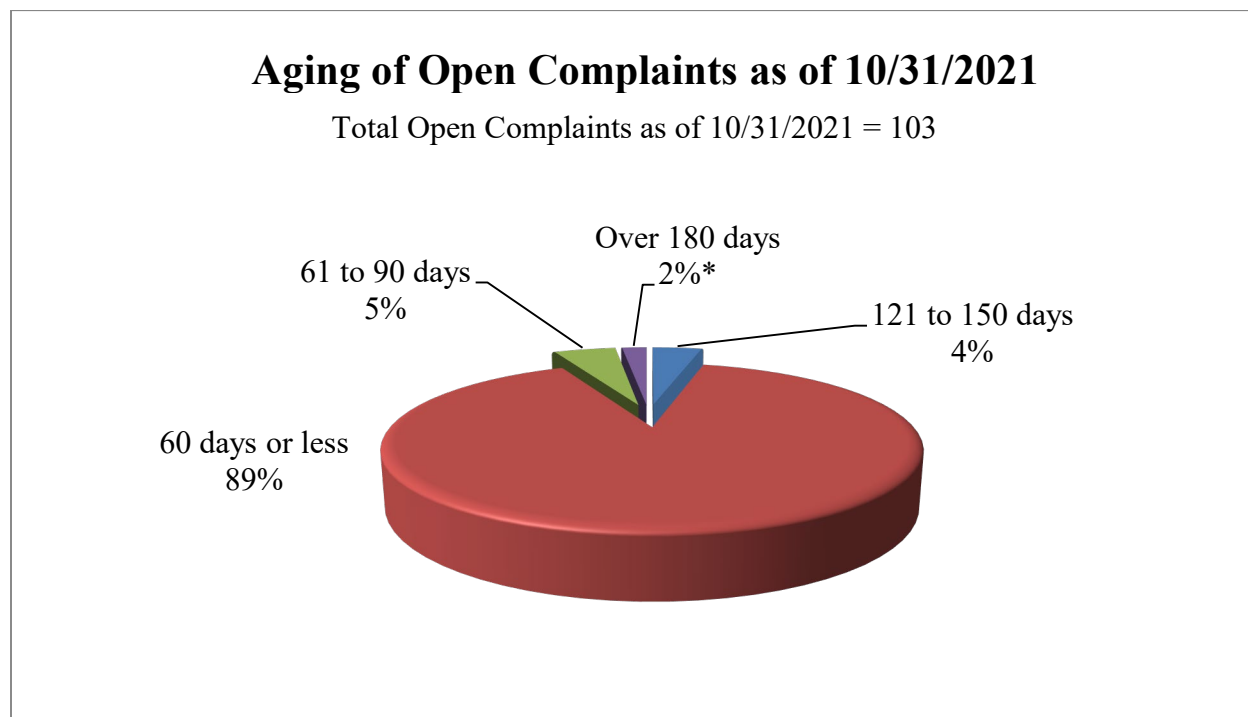
d) Legal Division Activities, including Consumer Complaints and Gift Reporting

Consumer Complaints Activity Report

Complaints Received – In September and October 2021, the Department received 224 complaints, representing a 9% increase in complaints received during the same time period in FY2021. Loan servicing complaints continue to be the largest complaint category, representing 58% of complaints received.

First quarter data for FY2022 will be available at the February meeting of the Finance Commission.

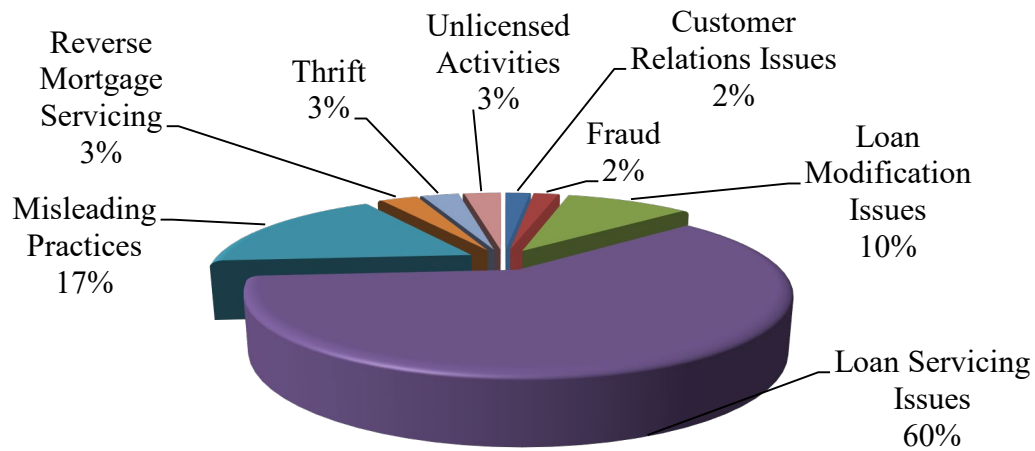
Open Complaints – Open complaint aging remains within acceptable ranges with 94% of complaints aged 90 days or less.



The foregoing chart reflects six complaints open longer than 120 days. Of these six complaints, five have since been closed. The other complaint remains open to facilitate an informal resolution by agreement of the parties involved, with the knowledge and approval of the complainant.

Nature of Open Complaints as of 10/31/2021

Total Open Complaints as of 10/31/2021 = 103



In September and October 2021, the Department closed 224 complaints. Of those complaints, 123 were servicing related complaints, 95.1% of which were closed within 90 days, and 101 were non-servicing related complaints, 92.1% of which were closed within 90 days.

Legal and Enforcement Activity Report

Enforcement Orders

In September and October 2021, the Department issued three Advisory letters, two Agreed Orders to Take Affirmative Action, and one Agreed Order – Other.

Recovery Fund Applications

In September and October 2021, the Department received one Recovery Fund application, which is currently under investigation.

Contested State Office of Administrative Hearings (SOAH) Cases

The Department does not have any cases currently pending at SOAH and recently closed two cases previously pending, discussed below. During September 2021, SOAH issued a docket suffix to the Department ("CHI") for use in denoting when a case involves criminal history information or credit history information (contested cases involving suspension or revocation of a license, or denial of an application for licensure), and thus is a confidential proceeding closed to the public.

Jeffrey Alan Cree (SOAH Docket No. 450--21-2466; confidential proceeding)

The Department recently closed this case. Mr. Cree applied with the Department for licensure as a residential mortgage loan originator. On March 9, 2021, the Department's Commissioner sought to deny the application based on information discovered during the application process. On March 26, 2021, Mr. Cree appealed the Commissioner's decision. On June 9, 2021 the Department filed its Notice of Hearing at SOAH seeking to uphold the Commissioner's decision. After docketing the case at SOAH and being served discovery, on November 3, 2021, Mr. Cree withdrew his

request for appeal of the Commissioner's decision to deny his application for licensure, and on November 4, 2021, the ALJ formally dismissed the case from SOAH's docket.

Wade Allen Patton (SOAH Docket No. 450--21-3268; confidential proceeding)

The Department recently closed this case. Mr. Patton applied with the Department for licensure as a residential mortgage loan originator. On July 29, 2021, the Department's Commissioner sought to deny the application based on information discovered during the application process. On or about August 5, 2021 Mr. Patton appealed the Commissioner's decision. On August 19, 2021 the Department filed its Notice of Hearing at SOAH seeking to uphold the Commissioner's decision to deny the application for licensure. After docketing the case at SOAH and after considering the additional information obtained during the discovery process, the Department and Mr. Patton entered into a conditional license agreement to resolve the issues giving rise to the contested case, and October 4, 2021, the ALJ formally dismissed the case from SOAH's docket.

Litigation

Peter David Wagner, d/b/a Preservation of Your Home and Educational Ministries v. Texas Department of Savings and Mortgage Lending (Cause No. 03-21-00389, pending before the Texas Third Court of Appeals); Appeal of Department of Savings and Mortgage Lending v. Peter D. Wagner, d/b/a Preservation of Your Home and Educational Ministries (Cause No. D-1-GN-20-004218, before the 345th District Court, Travis County, Texas)

This case involves a settlement agreement entered into between the Department and Mr. Wagner to resolve a contested case matter. Per the terms of the settlement agreement, Mr. Wagner was required to make restitution payments to consumers in connection with unlicensed residential mortgage loan originator activity he engaged in. In May 2020, Mr. Wagner defaulted under the terms of the settlement agreement. On August 12, 2020, at the request and on behalf of the Department, the Financial Litigation and Charitable Trusts Division of the Office of the Attorney General (OAG) filed suit against Mr. Wagner to reduce the settlement agreement to an enforceable state court judgment. On May 18, 2021, the Department's Motion for Summary Judgment was granted, and judgment was entered against Mr. Wagner in the amount of \$2,106,794. In June, 2021, Mr. Wagner filed an appeal with the Third Court of Appeals. The appellant's (Mr. Wagner's) brief was due on September 23, 2021, and has not been filed with the court. On November 9, 2021, the Department received notice from the court stating that, unless Mr. Wagner files his appellant's brief on or before November 19, 2021, the appeal would be subject to dismissal for want of prosecution. On November 23, 2021, Mr. Wagner filed a motion for an extension of time to file his appellate brief. On November 29, 2021, the court granted the motion. Mr. Wagner's appellate brief is now due on January 7, 2022.

With respect to collection of the district court judgment, on October 13, 2021, OAG filed an Abstract of Judgment in the Travis County real property records (Mr. Wagner's last known county of residence) on behalf of the Department, in order to create a judgment lien on any non-exempt real property he may own in such county. To the extent judgment is not overturned on appeal, OAG will undertake further collections efforts on the judgment.

Public Information Requests

During the months of September and October 2021, the Department received and responded to 20 public information requests, none of which required forwarding to the Office of the Attorney General.

Rulemaking

SML Future Rule Activity		
Rule	Rulemaking Action	Projected Date for Presentation
7 TAC §80.204 and §81.204, Books and Records	Proposed amendments	February 2021

Gift Reporting

On October 8 and 9, 2021, Interim Commissioner Trotti was a guest speaker at the Southwest Association of Bank Counsel's 2021 Annual Legal Conference and all registration fees for her attending the event were waived. The applicable registration fee was \$595.

e) Legislative Activities

State

The 87th Legislature's Third Special Session adjourned October 19, 2021. The Legislature enacted various measures including measures concerning the expenditure of federal COVID-19 relief funds, and approval of new congressional maps. Of particular note to the Department, SB1 was enacted to propose a constitutional amendment (SJR2) raising the *ad valorem* homestead property tax exemption for school district property taxes from \$25,000 to \$40,000. The constitutional amendment will now be put before voters to decide on, and joins another proposed constitutional amendment on the May 7, 2022 ballot. This proposed amendment was enacted by the 87th Legislature during the Second Special Session (SB12; SJR2), and would, if approved, extend a property tax reduction previously enacted by the Legislature during the 86th Legislature (Regular Session (HB3)) to elderly and disabled Texas residents.

On November 2, 2021, voters approved two constitutional amendments to limit *ad valorem* school district property taxes incurred by the surviving spouse of a person with disabilities who is older than 65 and has died (Proposition 7 (HJR125)), and to expand eligibility for residential homestead property tax exemptions to include spouses of military members killed or fatally injured in action (Proposition 8 (SJR35)).

The Department will continue to monitor the activities of the Texas Legislature to the extent a fourth special session is called, and concerning the interim committee charges assigned while the Legislature is adjourned.

Federal

The Department monitors potential federal legislation, rules, and other developments that might affect the Texas mortgage and thrift industries. Such general areas include developments related to ESG (Environmental, Social, and Governance), cryptocurrency, cybersecurity, personal/data privacy, FinTech, IRS reporting requirements, and the hemp and legal cannabis industries. Regarding specific legislation, the Department is paying particular attention to the "Infrastructure Investment and Jobs Act," commonly referred to as the "infrastructure bill," signed into law on November 15, 2021, which, among other things, extends traditional reporting requirements for certain transactions involving more than \$10,000 in cash to transactions involving digital assets including

cryptocurrencies, the “Build Back Better Act,” a version of which was passed by the House on November 19, 2021 (and, notably, did not contain expanded IRS reporting requirements as had existed in an earlier version of the bill), and, potentially, the inclusion of the cannabis-related S.A.F.E. Banking Act in the National Defense Authorization Act, as well as the following:

1. S.2499 – SAFE DATA Act
2. H.R.3105 – Common Sense Cannabis Reform for Veterans, Small Businesses, and Medical Professionals Act
3. H.R.2863 - First-Time Homebuyer Act of 2021
4. H.R.2561 - Promoting Access to Capital in Underbanked Communities Act of 2021
5. H.R.2270 - Bank Service Company Examination Coordination Act of 2021
6. S.910 - SAFE Banking Act of 2021
7. H.R.1996 - SAFE Banking Act of 2021
8. H.R.1847 - Rent and Mortgage Cancellation Act of 2021
9. S.3249 - Revises reporting requirements for digital assets
10. H.R.6006 - Amends the Internal Revenue Code to clarify the definition of broker
11. S.3206 - Repeals provisions of the Infrastructure Investment and Jobs Act.

2. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans

PURPOSE: The purpose of the new rules in 7 TAC, Part 4, Chapter 78, is to adopt rules for the Department's administration and enforcement of Finance Code Chapter 159, concerning Wrap Mortgage Financing, arising from enactment of Senate Bill 43 (SB43) during the 87th Legislature (Regular Session). An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department requests that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 78, with changes to the proposed text as published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve adoption of the new rules in 7 TAC Chapter 78.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 78. WRAP MORTGAGE LOANS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts new rules in 7 TAC Chapter 78, Wrap Mortgage Loans, §§78.1 - 78.3, 78.100 - 78.102, 78.200, 78.201, 78.300 - 78.303, 78.400 - 78.403. The commission's proposal was published in the October 29, 2021 issue of the *Texas Register* (46 TexReg 7306). The following rule is adopted with changes to the published text and is republished to reflect such changes: §78.2. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment. The remaining rules in the proposal are adopted without changes to the proposed text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

During the 87th Legislature (Regular Session), Senate Bill 43 (SB43) was enacted into law (eff. January 1, 2022) which, among other things, amended the Finance Code to create new Finance Code Chapter 159, concerning Wrap Mortgage Loan Financing (Chapter 159). A wrap mortgage loan is a loan made to finance the purchase of residential real estate that leaves a preexisting loan and lien owed by the previous owner (wrap lender) in place when the property is sold (and is therefore thought to encapsulate or "wrap around" the preexisting loan). The borrower (wrap borrower) signs a new promissory note and deed of trust to secure the purchase price of the residential real estate (less any down payments). The wrap loan is thus

subordinated and becomes "junior" or "inferior" to the preexisting lien. The wrap borrower makes periodic payments to the wrap lender or its third-party servicer for the wrap lender or third-party servicer to then make payments toward and satisfy the amounts owed on the preexisting lien. The adopted rules: (i) create definitions necessary to administer Chapter 159; (ii) clarify how time periods measured in days by Chapter 159 are to be calculated; (iii) clarify and establish requirements related to the written disclosure a wrap lender is required to provide to the wrap borrower in accordance with Finance Code §159.101, including: adoption of a model disclosure form by the commission, as mandated by such section; establishing formatting requirements for the disclosure; clarifying when a wrap lender is deemed to have provided the disclosure for purposes of the statute; establishing requirements concerning the requirement that a wrap lender provide a foreign-language version of the disclosure, for negotiations with the wrap borrower conducted primarily in a language other than English; and clarifying that the disclosure may be delivered by the wrap lender and signed by the wrap borrower electronically; (iv) clarify and establish requirements related to the requirement, pursuant to Finance Code §159.105, that a wrap mortgage loan be "closed by an attorney or a title company"; (v) establish requirements related to the wrap borrower's right to make deductions from the amounts the wrap borrower is required to pay under the terms of the wrap mortgage loan for payments made to the preexisting lienholder or other obligee in connection with the preexisting loan or lien, as provided by Finance Code §159.202; (vi) clarify and establish requirements related to the fiduciary duties owed to a wrap borrower by a person who collects or receives payment from a wrap borrower, as provided by Finance Code §159.152, including: clarifying that a wrap lender may not delegate or assign its fiduciary

ADOPTION OF NEW RULES
7 TAC CHAPTER 78
PAGE 2 OF 17

duties to another person except as a result of selling or assigning the wrap mortgage loan; clarifying that, unless agreed to otherwise in writing by the wrap borrower and wrap lender, funds received from a wrap borrower must be placed in a trust account maintained for the benefit of the wrap borrower; and establishing requirements for the wrap lender to maintain a separate accounting for each wrap mortgage loan made by the wrap lender; (vii) clarify and establish requirements concerning the wrap lender's use of a third party to act as residential mortgage loan servicer; (viii) establish requirements concerning the books and records a wrap lender that is required to register as a residential mortgage loan servicer under Finance Code Chapter 158 (wrap lender registrant) must create and maintain, as mandated of the commission by Finance Code §159.252(d)(1); and (ix) clarify and establish requirements related to the savings and mortgage lending commissioner's authority to make inspections (examinations) of and conduct investigations on a wrap lender registrant, including: establishing what constitutes reasonable cause for an investigation, as mandated of the commission by Finance Code §159.252(d)(2); and, addressing the reimbursement of expenses for examination by the commissioner (by and through the commissioner's examiners) of records located outside of Texas, as mandated of the commission by Finance Code §159.252(g).

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or November 28, 2021. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§78.1 - 78.3

Statutory Authority

The rules are adopted under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This adopted rules affect the statutes contained in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.1. Purpose and Applicability.

This chapter governs the Commissioner's administration and enforcement of Finance Code Chapter 159, governing wrap mortgage loans concerning residential real estate located in Texas. This chapter applies to wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan.

§78.2. Definitions.

The following terms, when used in this chapter, and in the Commissioner's administration and enforcement of Finance Code Chapter 159, have the following meanings, unless the context clearly indicates otherwise:

(1) "Application" means a request, in any form, for an offer (or a response to a solicitation for an offer) of wrap mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

ADOPTION OF NEW RULES
7 TAC CHAPTER 78
PAGE 3 OF 17

(2) "Attorney" has the meaning assigned by Texas Insurance Code §2501.003.

(3) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "E-Sign Act" refers to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006.

(6) "Inspection" includes examination.

(7) "Legal holiday" means the federal legal public holidays set forth in 5 U.S.C. §6103(a).

(8) "Make a wrap mortgage loan," means when a person determines the credit decision to provide the wrap mortgage loan, or the act of funding the wrap mortgage loan or transferring money to the wrap borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the wrap mortgage loan.

(9) "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Finance Code §180.002.

(10) "Residential mortgage loan" has the meaning assigned by Finance Code §159.001. The term does not include a loan which is secured by structure that is suitable for occupancy as a dwelling but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(11) "Residential mortgage loan originator" has the meaning assigned by Finance Code §180.002.

(12) "Residential mortgage loan servicer" has the meaning assigned by Finance Code §158.002.

(13) "Residential real estate" has the meaning assigned by Finance Code §159.001. For purposes of Finance Code §159.002(b)(1), the term does not include "unimproved residential estate," as that term is defined by Finance Code §159.002(a).

(14) "Superior lien" refers to any lien described by Finance Code §159.001(7)(A).

(15) "Superior lienholder" means the holder of any lien described by Finance Code §159.001(7)(A).

(16) "Third-party servicer" means a person other than the wrap lender acting as residential mortgage loan servicer for a wrap mortgage loan.

(17) "Title company" means a "title insurance company" as that term is defined by Texas Insurance Code §2501.003

(18) "UETA" refers to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code Chapter 322.

(19) "Wrap borrower" has the meaning assigned by Finance Code §159.001.

(20) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(21) "Wrap lender registrant" means a wrap lender who is required to register as a residential

ADOPTION OF NEW RULES
7 TAC CHAPTER 78
PAGE 4 OF 17

mortgage loan servicer under Finance Code Chapter 158.

(22) "Wrap mortgage applicant" means an applicant for a wrap mortgage loan or a person who is solicited (or contacts a wrap lender in response to a solicitation) to obtain a wrap mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Mortgage Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(23) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

§78.3. Computation of Time.

The calculation of any time period measured in days by Finance Code Chapter 159 is to be made using calendar days. In computing a period of days, the first day is excluded and the last day is included. Except with respect to the disclosure required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), if the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

The agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending



SUBCHAPTER B. LENDER
REQUIREMENTS AND RESPONSIBILITIES

7 TAC §§78.100 - 78.102

Statutory Authority

The rules are adopted under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159. §78.101(b) is further adopted under the authority of, and to implement, Finance Code §159.101(c).

The adopted rules affect the statutes contained in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.100. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to a wrap lender's requirements and responsibilities under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter C, and §159.105.

§78.101. Required Disclosure.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the written disclosure a wrap lender is required to provide the wrap borrower in accordance with Finance Code §159.101 (disclosure).

(b) Model Disclosure Form. In accordance with Finance Code §159.101(c), the following form (Figure: 7 TAC §78.101(b)(3); model disclosure form) is deemed to satisfy the substantive requirements of Finance Code §159.101(a). Interested persons should visit the Department's website (sml.texas.gov) for a form-fillable version of the model disclosure form and an

editable version in Word format (including for purposes of attaching additional sheets to supplement the form with additional information, as necessary). A wrap lender may modify and customize the model disclosure form; provided, the form:

(1) contains all substantive information contained in the model disclosure form that is applicable to the person issuing the disclosure;

(2) conforms to the formatting requirements of subsection (c) of this section; and

(3) otherwise fulfills the requirements of Finance Code §159.101(a).

Figure: 7 TAC §78.101(b)(3)

(c) Formatting Requirements. The disclosure must be made in 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. Those portions of the disclosure comprising the body must use a normal font type. Those portions of the disclosure comprising a heading must use a bolded font type. Those portions of the disclosure comprising the content required by Finance Code §159.101(a)(2) and Texas Property Code §5.016(a)(7) must use an "all caps" or "small caps" font type. The following typefaces are deemed to be easily readable for purposes of this section (this list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

(1) Arial;

(2) Calibri;

(3) Century Schoolbook;

(4) Garamond;

(5) Georgia;

(6) Lucida Sans;

(7) Times New Roman;

(8) Trebuchet; and

(9) Verdana.

(d) Effective Date. The disclosure is deemed to be provided by the wrap lender and received by the wrap borrower for purposes of Finance Code §159.101 on the date the disclosure is dated and signed by the wrap borrower, as provided by Finance Code §159.101(b).

(e) Foreign Language Requirement. The wrap borrower must be provided an English-language version of the disclosure in addition to and contemporaneously with the foreign-language version required by Finance Code §159.102, if applicable. A wrap lender may provide the English-language and foreign-language disclosure in a single, combined disclosure. A wrap borrower receiving a foreign-language version of the disclosure may, but is not required to, date and sign the foreign-language disclosure. A wrap borrower receiving a foreign-language version of the disclosure must date and sign the English-language version of the disclosure, which determines the effective date the disclosure is received by the wrap borrower, as provided by subsection (d) of this section. A Spanish-language version of the model disclosure form is available on the Department's website (sml.texas.gov) and is deemed to satisfy the substantive requirements of Finance Code §159.101(a) and §159.102, with respect to negotiations with a wrap borrower conducted primarily in Spanish.

(f) Electronic Delivery and Signature. The wrap lender may provide, and the wrap borrower may

sign, the disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

(g) Computation of Time. Computation of the time period for a wrap lender to provide the disclosure required by Finance Code §159.101(a) is made using calendar days, irrespective of any Saturdays, Sundays, or legal holidays.

§78.102. Closing Requirements.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement that a wrap mortgage loan be closed by an attorney or title company, as provided by Finance Code §159.105.

(b) Closing by Title Company. For purposes of Finance Code §159.105, a wrap mortgage loan may only be closed by a title company issuing an owner's title insurance policy to the wrap borrower for the residential real estate secured or designed to be secured by the wrap mortgage loan.

The agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending



SUBCHAPTER C. BORROWER'S RIGHTS
AND RESPONSIBILITIES

7 TAC §78.200, §78.201

Statutory Authority

The rules are adopted under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

The adopted rules affect the statutes contained in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.200. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to a wrap borrower's rights under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter E.

§78.201. Right to Deduct; Notice of Deduction.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to a wrap borrower's right to make deductions from the amounts the wrap borrower owes to the wrap lender under the terms of a wrap mortgage loan, as provided by Finance Code §159.202.

(b) Notice of Deduction. To the extent the wrap borrower seeks to exercise its right to deduct amounts owed to the wrap lender pursuant to Finance Code §159.202, the wrap borrower must, at the time the wrap borrower makes the deduction, provide the wrap lender or its third-party servicer notice of the amounts deducted including:

(1) an itemized list of the deductions made, describing in detail the amounts paid by the wrap borrower on behalf of the wrap lender;

(2) the dates on which such payments were made; and

(3) supporting documentation evidencing paragraphs (1) and (2) of this subsection.

The agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending



SUBCHAPTER D. WRAP LENDER AND SERVICER REQUIREMENTS

7 TAC §§78.300 - 78.303

Statutory Authority

The rules are adopted under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

The adopted rules affect the statutes contained in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.300. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements applicable to persons who collect or receive a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter D. The rules in this subchapter apply to a wrap lender or any other person who collects or receives a payment from a wrap

borrower under the terms of a wrap mortgage loan, including a third-party servicer servicing a wrap mortgage loan.

§78.301. Fiduciary Duties; Required Accounting.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the fiduciary duties owed to a wrap borrower by a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code §159.152.

(b) Non-Delegation of Duties. A wrap lender or other person collecting or receiving a payment from a wrap borrower under the terms of a wrap mortgage loan may not delegate or assign its fiduciary duties owed under Finance Code §159.152 to another person except as a result of the wrap lender selling, assigning, transferring, or conveying the wrap mortgage loan. Any sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan is deemed to include an assignment of the fiduciary duties owed by the wrap lender to the wrap borrower under Finance Code §159.152. A sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan does not extinguish the assigning wrap lender's fiduciary duties to the wrap borrower in connection with amounts collected or received by the wrap lender from the wrap borrower prior to the effective date of the sale, assignment, transfer, or conveyance of the wrap mortgage loan.

(c) Required Accounting. The wrap lender must, either directly, or through use of a third-party servicer it has contracted with, maintain, on a current basis, separate written accountings for each wrap mortgage loan made by the wrap lender sufficient to account for, track, and retrospectively trace all payments received from

the wrap borrower under the terms of the wrap mortgage loan, and all disbursements, transfers, or assignments of such funds, including, but not limited to, disbursements made to a superior lienholder, taxing authority, or insurance company in connection with the residential real estate secured by the wrap mortgage loan. The accounting required by this subsection must be maintained by the wrap lender or its successor-in-interest until the limitations period for the wrap borrower to bring any cause of action against the wrap lender arising from a violation of law in connection with the wrap mortgage loan transaction has lapsed. To the extent the wrap lender utilizes the services of a third-party servicer, a wrap lender must establish and maintain policies and procedures that are reasonably designed to acquire from the third-party servicer any information or supporting documentation necessary or prudent to ensure the wrap lender satisfies the accounting required by this subsection. The accounting required by this subsection may be accomplished through administration of and the retention of records in connection with a trust account as provided by §78.302 of this title (relating to Trust Account; Maintenance of Funds Held in Trust).

§78.302. Trust Account; Maintenance of Funds Held in Trust.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement of a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan to hold such funds in trust, as provided by Finance Code §159.151.

(b) Definitions. The following terms in this section have the following meanings, unless the context clearly indicates otherwise:

(1) "Financial institution" has the meaning assigned by Finance Code §201.101(1).

(2) "Trust account" means a custodial, trust, or escrow account managed by one person for the benefit of another person.

(3) "Trust funds" means the funds collected or received from a wrap borrower under the terms of a wrap mortgage loan.

(4) "Receiver" means a wrap lender or other person collecting or receiving trust funds.

(c) Trust Account Required. Unless otherwise agreed to in writing by the wrap borrower and wrap lender in connection with the wrap mortgage loan, trust funds must be placed in a trust account meeting the requirements of this section, and maintained or disbursed in accordance with this section.

(d) Trust Account Requirements.

(1) The trust account must be clearly identified as such at the financial institution.

(2) The receiver may, but is not required to, maintain separate trust accounts for each wrap mortgage loan or wrap borrower. To the extent the receiver maintains separate trust accounts for each wrap mortgage loan or wrap borrower, the same trust account may also be used for purposes of administering an escrow account for the wrap mortgage loan or wrap borrower.

(3) Funds in the trust account must be capable of being disbursed by the receiver on-demand or in an amount of time sufficient to timely effect disbursements reasonably anticipated from the trust account.

(4) A receiver, in addition to depositing trust funds, may deposit and maintain a limited amount of money in the trust account necessary to avoid or cover potential fees imposed by the financial institution in connection with the trust account including account maintenance fees or fees charged for insufficient funds.

(e) A receiver may not:

(1) commingle trust funds with non-trust funds;

(2) deposit or maintain trust funds in a personal account or any form of business account; or

(3) pay operating expenses or otherwise make withdrawals or disbursements from a trust account for any purpose other than the proper disbursement of trust funds.

(f) Disbursement of Trust Funds.

(1) A receiver may only disburse money from a trust account in accordance with the terms of the wrap mortgage loan or such other agreement as may be entered into with the wrap borrower to govern the disbursement of trust funds.

(2) If a receiver is unable to reasonably determine to which party or parties trust funds should be disbursed, the receiver may tender trust funds into the registry of a court of competent jurisdiction and interplead the relevant party or parties.

§78.303. Use of a Third-Party Servicer.

(a) Purpose. The purpose of this section is to clarify and establish requirements concerning a wrap lender's use of a third party to act as a residential mortgage loan servicer of wrap mortgage loan.

(b) Use of a Third-Party Servicer. A wrap lender is authorized to use the services of a third party to act as the residential mortgage loan servicer of a wrap mortgage loan (also known as a "subservicer").

(c) Handling of Payments and Disbursements. To the extent a wrap lender uses the services of a third-party servicer, the handling of payments and disbursement of funds received by the third-party servicer is governed by the agreement between the wrap lender and third-party servicer, including:

(1) whether or not and on what terms the third-party servicer makes disbursements to the superior lienholder;

(2) disbursements made to the wrap lender; and

(3) how payments by the wrap borrower in excess of the current amount due under the terms of the wrap mortgage loan are handled, applied, or disbursed.

(d) No Limitation on Liability. As provided by Finance Code §159.107, any agreement between a wrap lender and a third-party servicer may not seek to waive or limit the wrap lender's or third-party servicer's liability to the wrap borrower arising from the fiduciary duties owed to the wrap borrower pursuant to Finance Code §159.152. However, an agreement between a wrap lender and third-party servicer may contain an indemnification agreement concerning potential liability arising from the fiduciary duties owed to the wrap borrower under Finance Code §159.152.

The agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

Iain A. Berry

Associate General Counsel
Department of Savings and Mortgage Lending

♦ ♦ ♦

SUBCHAPTER E. COMPLIANCE AND
ENFORCEMENT

7 TAC §§78.400 - 78.403

Statutory Authority

The rules are adopted under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159. §§78.401 - 78.403 are further adopted under the authority of, and to implement, Finance Code §159.252(d). §78.402(g) is further adopted under the authority of, and to implement, Finance Code §159.252(g).

The adopted rules affect the statutes contained in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.400. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to the Commissioner's authority to conduct inspections of, and investigations on, a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158 (wrap mortgage registrant), as provided by Finance Code Chapter 159, Subchapter F. This subchapter further clarifies and establishes requirements concerning the Commissioner's authority to seek enforcement action against a wrap mortgage registrant under Finance Code Chapter 159, Subchapter G.

§78.401. Required Books and Records by a
Wrap Lender Registrant.

(a) Purpose. This section clarifies and establishes requirements related to the wrap lender's requirement to maintain information and records necessary to facilitate the Commissioner's inspection of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252(d)(1). The requirements of this section are in addition to and supplement the requirements a wrap lender registrant or other person is required to maintain as a licensee or registrant under Finance Code Chapters 156, 157, 158, or 342, as applicable.

(b) Maintenance of Records, Generally. Each wrap lender registrant must maintain records with respect to each wrap mortgage loan under Finance Code Chapter 159 and make those records available for examination under Finance Code §159.252. The records required by this section may be maintained using a paper, manual, electronic, or digitally-imaged recordkeeping system, or a combination thereof, unless otherwise specified by other applicable law. The records must be accurate, complete, current, legible, and readily accessible and sortable. If the requirements of other applicable law governing recordkeeping by the wrap loan registrant differ from the requirements of this section, such other applicable law prevails only to extent this section conflicts with the requirements of this section.

(c) Required Records. A wrap lender registrant must maintain the following items:

(1) Wrap Mortgage Servicing Log. A wrap mortgage servicing log for each wrap mortgage loan serviced by a wrap lender registrant, maintained on a current basis (which means that

all entries must be made within seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the loan or account number, or other unique identifier assigned by the wrap lender registrant to the wrap mortgage loan;

(B) the name and contact information of each wrap borrower; and

(C) the date the wrap mortgage loan was entered into by the wrap lender and wrap borrower.

(2) Wrap Borrower Index. The current alphabetical index or a report of outstanding wrap mortgage loans of the wrap lender registrant, regardless of whether or not it services the wrap mortgage loan, reflecting the name of each wrap borrower and the loan or account number, or other unique identifier assigned by the wrap lender to the wrap mortgage loan. A wrap lender registrant may maintain the wrap borrower index as a part of other records maintained by the wrap lender registrant; provided, the wrap lender registrant is able to sort, generate, and print, as a separate record, the wrap borrower index in strict alphabetical order.

(3) Wrap Mortgage Transaction File. A wrap lender registrant must maintain a wrap mortgage transaction file for each wrap mortgage loan or be able to produce the same information within a reasonable time upon request. The wrap mortgage transaction file must contain documents demonstrating the wrap lender registrant's compliance with applicable law, including Finance Code Chapter 159, and any applicable state and federal statutes, rules, or regulations. The wrap mortgage loan transaction file must include the following records or documents:

(A) for all wrap mortgage loan transactions:

(i) the promissory note, loan agreement, or repayment agreement, signed by the wrap borrower(s);

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document signed by the wrap borrower(s);

(iii) the title insurance policy or abstract of title;

(iv) the initial and final mortgage application (including any attachments, supplements, or addenda thereto), signed and dated by the mortgage applicant and the residential mortgage loan originator, and any other written or recorded information used to evaluate the mortgage application, as required by Regulation B, 12 C.F.R. §1002.4(c);

(v) the real estate contract documenting the sale of the residential real estate securing the wrap mortgage loan;

(vi) the disclosure statement requirement by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), including any foreign-language disclosure required by Finance Code §159.102;

(vii) the initial and any revised integrated loan estimate disclosure required by Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.37;

(viii) the initial, revised, and final closing disclosure as required by Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.38;

(ix) any rate lock agreements, or similar document;

ADOPTION OF NEW RULES
7 TAC CHAPTER 78
PAGE 12 OF 17

(x) the records relating to the ability-to-repay the wrap mortgage loan required by Regulation Z, 12 C.F.R. §1026.25 and §1026.43;

(xi) copies of any appraisal reports or written valuation reports used to determine the value of the residential real estate;

(xii) the privacy notice required by Regulation P, 12 C.F.R. §1016.5; and

(xiii) the wrap borrower's authorization and consent to receive electronic documents as required by the E-sign Act and Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.17(a)(1);

(B) with respect to servicing the wrap mortgage loan, the following additional records are required to be maintained:

(i) any payoff requests received from the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(ii) any payoff statements issued to the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(iii) if the wrap mortgage loan is paid off or otherwise satisfied, a copy of the release of lien;

(iv) receipts or invoices along with proof of payment for any attorneys' fees assessed, charged, or collected in the collection of a delinquent wrap mortgage loan;

(v) if collateral protection insurance is acquired or purchased, a copy of the insurance policy or certificate of insurance and the notice required by Finance Code §307.052;

(vi) any periodic statements or billing invoices sent to the wrap borrower;

(vii) copies of any collection letters or notices sent by the wrap lender registrant or its agent to the wrap borrower;

(viii) any modification, reinstatement, or settlement agreement that is proposed or entered into between the wrap borrower and the wrap lender registrant;

(ix) any records related to a consumer inquiry, complaint, or error resolution;

(x) any records or documents relating to a request for protection under the Servicemembers Civil Relief Act, 50 U.S.C. §3901 et seq.; and

(xi) any other servicing notice, disclosure, or record required by federal or state law;

(C) for wrap mortgage loan transactions involving a foreclosure or attempted foreclosure, the following records:

(i) for transactions involving judicial foreclosure:

(I) any records pertaining to a judicial foreclosure including records from the wrap lender registrant's attorneys, the court, or the wrap borrower or the wrap borrower's agent;

(II) any notice to cure the default sent to the wrap borrower and each superior lienholder as required by Texas Property Code §51.002(d), including verification of delivery of the notice;

(III) any notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(IV) any notice of acceleration sent to the wrap borrower and each superior lienholder; and

ADOPTION OF NEW RULES
7 TAC CHAPTER 78
PAGE 13 OF 17

(V) any records related to receipt of the foreclosure proceeds;

(ii) for transactions involving non-judicial foreclosure;

(I) the notice to cure the default sent to the wrap borrower and each superior lienholder as required by Texas Property Code §51.002(d), including verification of delivery of the notice;

(II) the notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(III) the notice of acceleration sent to the wrap borrower and each superior lienholder;

(IV) the notice of sale required by Texas Property Code §51.002(b) including verification of delivery of the notice;

(V) any records related to the foreclosure sale by the trustee including the person purchasing the property, and the dollar amount of the proceeds received from the foreclosure sale;

(VI) any records related to a short sale, deed-in-lieu of foreclosure, or similar disposition;

(VII) proof of payment of reasonable fees or charges paid by the trustee in connection with the deed of trust or similar instrument including fees for enforcing the lien against or posting for sale, selling, or releasing the residential real estate secured by the deed of trust; and

(VIII) the foreclosure deed upon sale of the property;

(D) for wrap mortgage loan transactions where the wrap borrower provided an actionable notice of rescission and the wrap lender registrant did

not avoid the rescission, a copy of the notice of rescission and documentation reflecting that the wrap lender registrant refunded to the wrap borrower all amounts required by Finance Code §159.104(c);

(E) for wrap mortgage loan transactions where the wrap lender avoided the rescission, documentation reflecting that the wrap lender:

(i) paid the outstanding balance due on the debt owed on the residential real estate to the superior lienholders;

(ii) paid any due and unpaid taxes or other governmental assessments owed on the residential real estate;

(iii) paid to the wrap borrower as damages for noncompliance the sum of \$1,000 and any reasonable attorneys' fees incurred by the wrap borrower; and

(iv) evidence of compliance with clause (i) or (ii) above provided to the wrap borrower;

(F) for wrap mortgage loan transactions where the wrap borrower has deducted from the amount owed to the wrap lender under the terms of the wrap mortgage loan as authorized by Finance Code §159.202, any records related to this action including the written notice from the wrap borrower required by §78.201 of this title (relating to Right to Deduct; Notice of Deduction), and any actions taken to address the deductions;

(4) General Business Records. General business records include:

(A) all servicing and sub-servicing agreements entered into by the wrap lender registrant as a residential mortgage loan servicer;

(B) policies and procedures related to the origination and servicing of wrap mortgage loans by the wrap lender registrant, including, but not limited to, Quality Control Policy / Compliance Manual, Identify Theft Prevention Program / Red Flags Rule required by 16 C.F.R. §681 et seq., Anti-Money Laundering Program required by Title X of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Personnel Administration / Employee Policies, Ability-to-Repay Underwriting Policies, and an information security program required by 16 C.F.R. §314.1 et seq.;

(C) records reflecting the disbursement of money to pay the superior lienholders and payment of taxes and insurance for which the wrap lender registrant has received from the wrap borrower;

(D) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to disbursements made in connection with wrap mortgage loans by the wrap lender registrant;

(E) complete records (including invoices and supporting documentation) for all expenses and fees paid in connection with the wrap mortgage loan, including the date and amount of all such payments;

(F) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(G) copies of all contractual agreements or understandings with third parties in any way relating to a wrap mortgage loan transaction;

(H) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(I) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed;

(5) Record of the wrap borrower's account (payment and collection history). A separate record must be maintained for the servicing account of each wrap borrower and the record must contain at least the following information on each wrap mortgage loan serviced by the wrap lender registrant:

(A) loan identification number;

(B) loan repayment schedule and terms, itemized to reflect:

(i) the date of the loan;

(ii) the number of installments;

(iii) the due date of installments;

(iv) the amount of each installment; and

(v) the maturity date;

(C) name, address, and phone number of the wrap borrower(s);

(D) legal description of the residential real estate;

(E) principal amount;

(F) total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(G) amount of official fees for recording or releasing a security interest that are collected at the time the loan is made;

(H) individual payment entries, itemized to show:

(i) the date payment was received (dual postings are acceptable if the date of posting is other than the date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(I) individual entries for disbursements of funds from a wrap borrower under the terms of wrap mortgage loan to superior lienholders, taxing authorities, insurance companies, or other payees, itemized to show:

(i) the actual date of disbursement; and

(ii) the actual amounts disbursed;

(J) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to the wrap borrower(s), with refund amounts itemized to show interest charges refunded, including the refund of any unearned points; and

(K) collection contact history, including a record of each contact made by a wrap lender registrant with the wrap borrower or any other person and each contact made by the wrap borrower with the wrap lender registrant, in connection with amounts due, with each record including the date, method of contact, contacted

party, person initiating the contact, and a summary of the contact.

(d) A wrap lender registrant must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws, rules, and regulations, including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(e) A wrap lender registrant must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(f) Production of Records. All books and records required by this section must be maintained in good order and must be produced for the Commissioner or the Commissioner's designee upon request.

(g) Records Retention Period. All books and records required by this section must be maintained for three years or such longer period(s) as may be required by applicable state or federal laws, rules, and regulations.

(h) Records Retention After Dissolution. Within ten days of termination of operations, a wrap lender registrant must provide the Department with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another wrap lender registrant, the transferee must provide the Department with written notice within ten days after receiving such records.

§78.402. Examination of Wrap Lender Registrants.

(a) Purpose. This section clarifies and establishes requirements related to the Commissioner's authority to make inspections

of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252.

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person of the wrap lender registrant listed in NMLS, or a person designated by the primary contact person, advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which the Department's examiners are scheduled to begin the examination. Failure to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made available to facilitate the examination.

(c) Scope. Examinations will be conducted to determine compliance with Finance Code Chapter 159, and this chapter, and will specifically address whether:

(1) all required books and records are being maintained in accordance with §78.401 of this title (relating to Required Books and Records by a Wrap Lender Registrant).

(2) all legal and regulatory requirements applicable to the wrap lender registrant are being properly followed; and

(3) other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code Chapter 159.

(d) The examiners will review a sample of wrap mortgage loan files identified by the examiners

and randomly selected from the wrap lender registrant's wrap mortgage servicing log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners may require a wrap lender registrant, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report.

(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will be maintained as confidential except as permitted or required by law.

(g) Reimbursement for Costs. When the Department must travel outside of Texas to conduct an examination of a wrap lender registrant because the required records are maintained at a location outside of Texas, the Department will require reimbursement for the actual costs incurred by the Department in connection with such travel, including, but not limited to, transportation, lodging, meals, communications, courier service, and any other reasonably related costs.

§78.403. Investigation of Wrap Lender Registrants.

(a) Purpose. The purpose of this section is to implement the requirements of Finance Code §159.252 concerning the Commissioner's authority to conduct an investigation of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

(b) Reasonable Cause for Investigation. Pursuant to Finance Code §159.252(b), the

Commissioner may, upon a finding of reasonable cause, examine a wrap lender registrant to determine whether the wrap lender registrant is complying with Finance Code Chapter 159, and this chapter. Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner has no reason to believe to be other than reliable, including documentary or other evidence, or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code Chapter 159, or this chapter.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending

♦ ♦ ♦

(c) Investigations will be conducted as deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(1) review and consideration of any complaints received by the Department against a wrap lender registrant;

(2) review of documentary evidence;

(3) interviews with complainants, licensees, and third parties;

(4) obtaining reports, advice, and other comments and assistance from other state and/or or federal regulatory, enforcement, or oversight bodies; and

(5) other lawful investigative techniques as the Commissioner deems necessary or appropriate, including, but not limited to, requesting that complainants or other parties that are the subject of a complaint provide explanatory, clarifying, or supplemental information.

The agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

3. Discussion of and Possible Action Regarding Anticipated and Pending Litigation:

Anticipated Litigation

None

Pending Litigation

None

C.

Texas Department of Banking

This page left blank intentionally.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

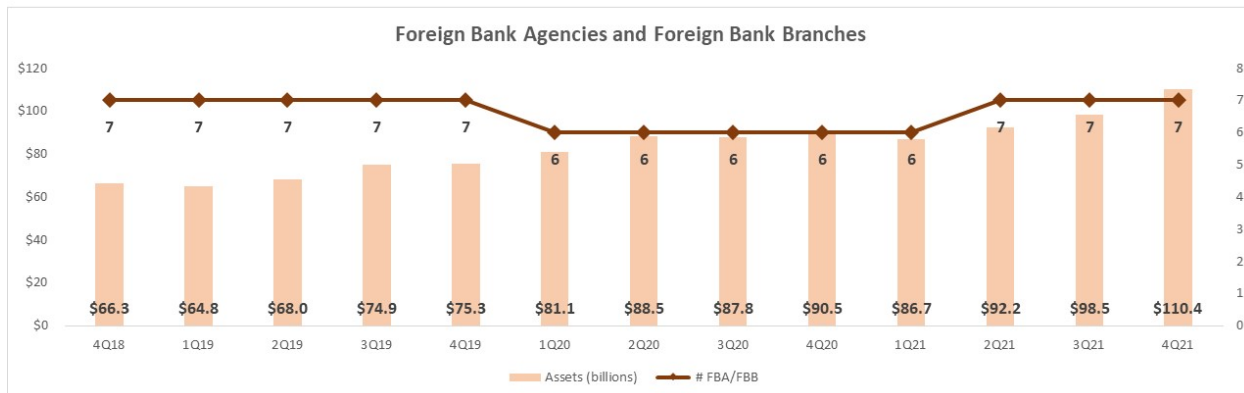
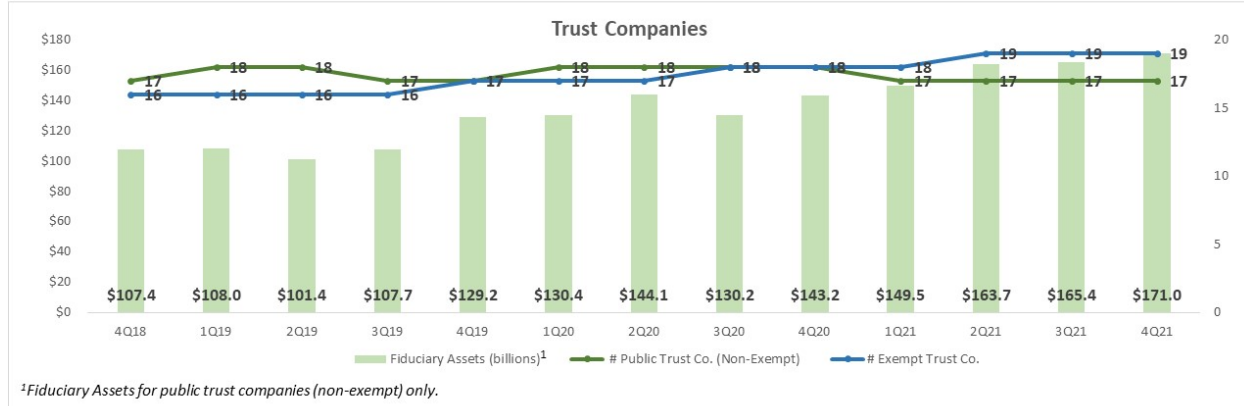
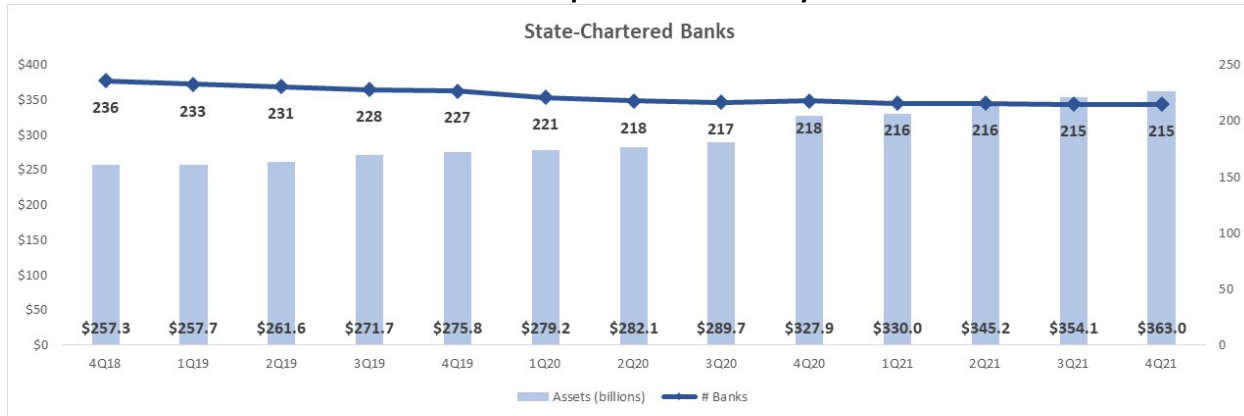
To: Finance Commission Members

From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*

Date: December 1, 2021

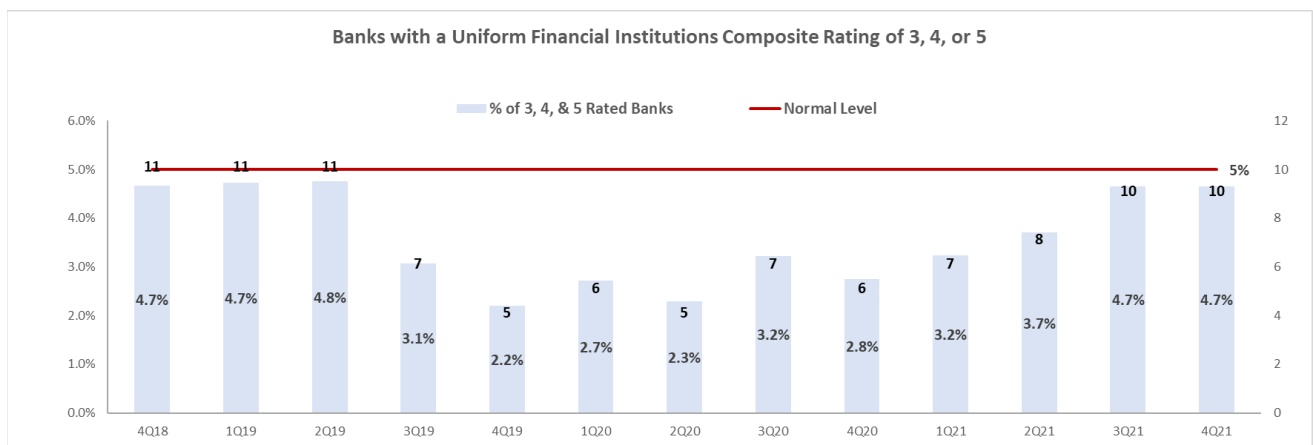
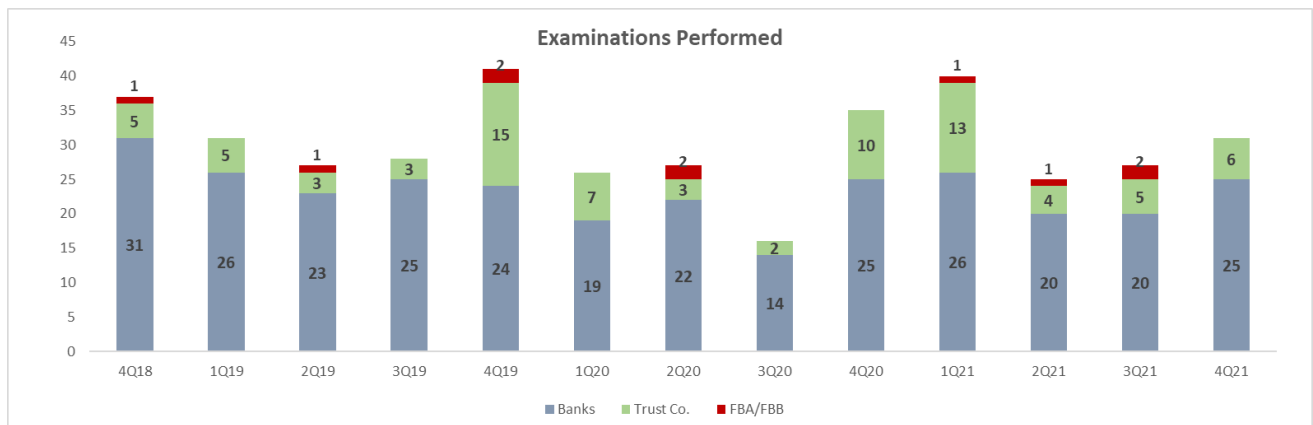
Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles



Summary of the Bank & Trust Supervision Division Activities

Page 2



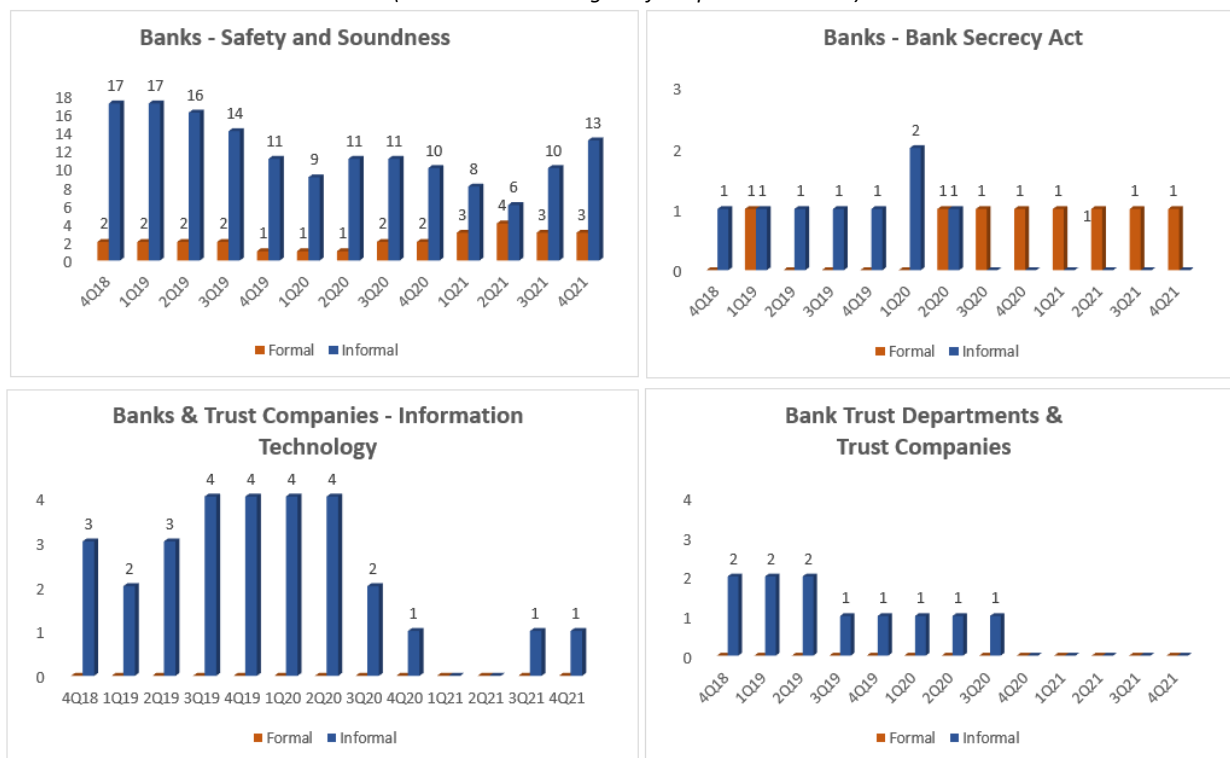
The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem banks is in the normal range between 3% and 5% of the total number of institutions. The support of the government stimulus programs has limited the economic fallout from the COVID-19 pandemic, and economic conditions continue to improve.

Summary of the Bank & Trust Supervision Division Activities

Page 3

Enforcement Actions Outstanding by Type

(Number outstanding as of the period indicated)



Formal actions include Orders to Cease and Desist, Consent Orders, Written Agreements and Supervisor Actions.

Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions.

Compliance actions are not included.

Compliance with Examination Priorities		
Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2021	FY 2022 (YTD – Oct 2021)
Commercial Banks (All / DOB Only)	95% / 93%	97% / 94%
IT	98% / 100%	94% / 87%
Trust	97% / 100%	100% / -
Foreign Banks (FRB)	67%	100%
Trust Companies (DOB)	100%	100%
IT	100%	100%

The division is meeting its examination priorities for FY 2022 for all examinations except for DOB led IT examinations. Two IT bank examinations were started late this fiscal year with an average of 13 days late.

Division Highlights

- **Cybersecurity Awareness:** The Department issued Industry Notice [2021-07](#), Cybersecurity Awareness Month: Focusing on the Fundamentals, on October 6, 2021. This notice highlights the fact that while many people believe most cybersecurity breaches are an act of sophisticated hackers and foreign agents, the majority of successful cyberattacks are the result of a failure to follow well-established cybersecurity practices. Additionally, the notice provides a link to a short video that highlights a three-step strategy for managing cybersecurity threats in a community bank.
- **COVID-19 Update:**
 - The Department continues to actively monitor and respond to the changing circumstances brought about by the COVID-19 pandemic. Most banks have reverted to normal operating schedules now that vaccines and boosters are readily available; however, several instances of COVID outbreaks have occurred resulting in temporary branch closures. The Department maintains communication with regulated entities between examinations and performs offsite monitoring of key financial metrics.
 - The Department continues to conduct predominantly offsite examinations, but is performing some onsite work as well as in-person management and board meetings on a limited basis. Banks and trust companies due for an examination are provided with the option for either an onsite or offsite examination based on management's comfort level and COVID-19 cases in the community. In addition, in-person meetings with staff at Austin Headquarters are occurring upon request.
 - The impact of the COVID-19 pandemic to bank loan portfolios has thus far been minimal. Adversely classified asset levels have increased modestly, and overall credit risk remains sound.
- **Special Operations and Conferences:**
 - On October 6, 2021, Bank and Trust Supervision Director (DB&T) Dan Frasier represented the Department (virtually) on the Regulator Panel for the Internal Audit segment of the Texas Bankers Association (TBA) Internal Audit School.
 - On October 7, 2021, Commissioner Charles G. Cooper represented the Department as a speaker at the Annual Bankers Legal Conference presented by TBA and the Southwest Association of Bank Counsel (SABC) in San Antonio.
 - On October 14, 2021, Regional Director (RD) Larry Walker represented the Department as a speaker on the Safety and Soundness Exam Updates segment for the TBA CFO Conference.
 - On October 18, 2021, RD Walker represented the Department (virtually) on the Regulatory Panel for the Texas Society of CPAs Financial Institution Conference.

- On October 18, 2021, Director of IT Security Examinations Phillip Hinkle represented the Department (virtually) as a speaker on the Ransomware SAT segment for the California Department of Financial Protection and Innovation (DFPI) Bank Examiners Staff Conference.
- On November 5, 2021, Review Examiner Melissa Dvoracek represented the Department (virtually) on the Compliance Panel for the Independent Bankers Association of Texas (IBAT) 2021 Compliance Summit.
- On November 18, 2021, RD David Reed represented the Department at the Economic Forecast Conference in Odessa.
- The 2021 Commissioner's Post Examination Survey responses are available on the agency's website. The purpose of the survey is to solicit input regarding the division's examination processes. The division received 122 total responses in fiscal year 2021 and most of the responses reflect either "strongly agree" or "agree" ratings.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

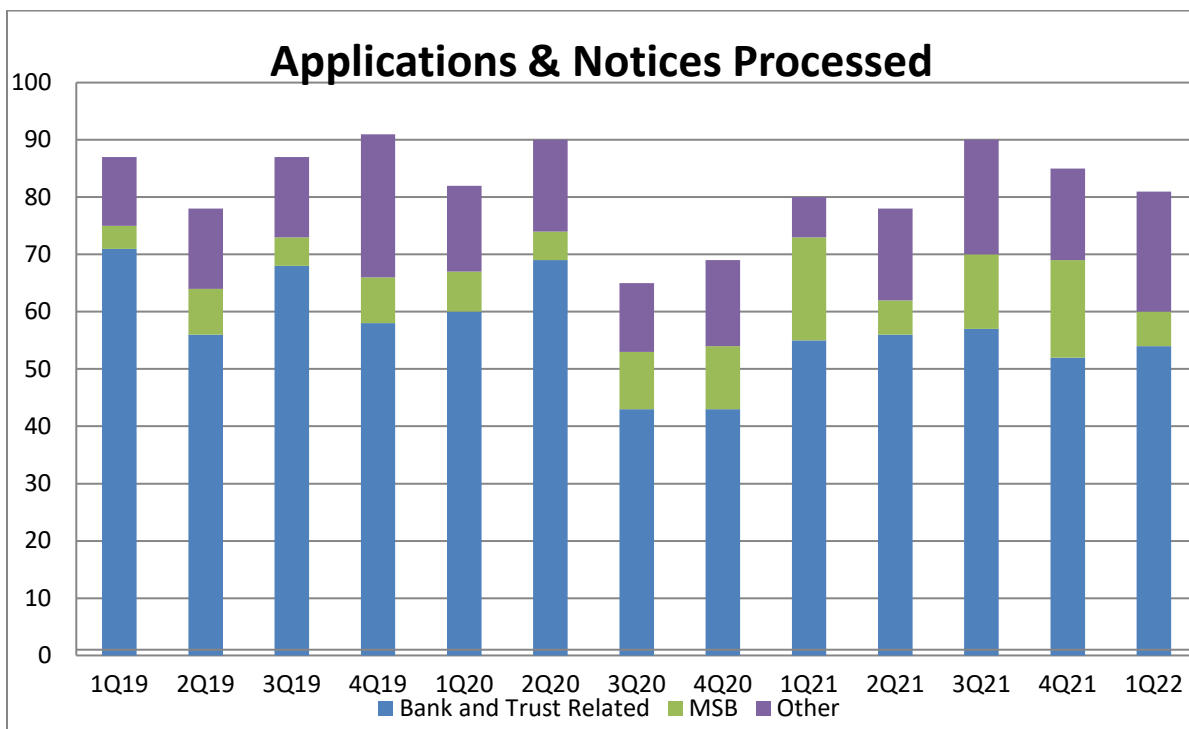
www.dob.texas.gov

To: Finance Commission Members

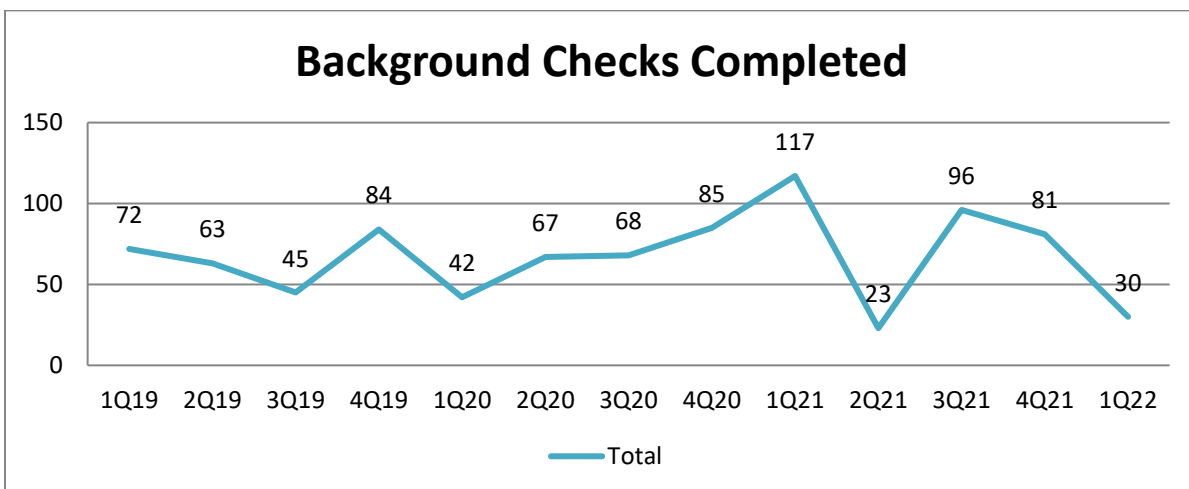
From: Mark Largent, Director of Corporate Activities

Date: December 1, 2021

Subject: Summary of the Corporate Division's Activities



Information on a Fiscal Quarter Basis.



Information on a Fiscal Quarter Basis.

Entities/Activities	Applications and Notices Under Review (as of November 30, 2021)
Bank Related	15
Trust Companies	2
Money Services Business (MSB)	29
Others	1
Totals	47

Division Highlights

- Application volume remains similar to the level reported at the last Finance Commission meeting. Compared to our last report submitted, the Corporate Division's filings presently under review by category type changed by:
 - Bank related decreased -5 (25%)
 - Trust company increased 1 (100%)
 - MSB related increased 3 (12%)
 - Other decreased -2 (67%)
- A commissioned examiner with the Department has been selected for a Corporate Analyst position within the Corporate Division.
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
 - *Banks*
 - The First State Bank, Louise, Texas, completed its merger with Dilley State Bank, Dilley, Texas [no change in state banking assets].
 - *Trust Companies*
 - None.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705
512-475-1300 / 877-276-5554
www.dob.texas.gov

To: Finance Commission Members

From: Jesus "Jesse" Saucillo, Director of Non-Depository Supervision *JS*

Date: December 1, 2021

Subject: Summary of Non-Depository Supervision (NDS) Activities

			FY 2022							
Entity	FY 2021		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	196	\$219.2	*	*						
Prepaid Funeral Contract (PFC)	345	\$4.5	*	*						
Perpetual Care Cemeteries (PCC)	243	\$401.8**	*	*						
Check Verification Entities (CVE)	2	n/a	*	*						
Examinations Performed										
MSB	79		*							
MSB Limited Scope	1		*							
MSB Accepted other State	5		*							
PFC	230		*							
PFC Limited Scope	0		*							
PCC	212		*							
PCC Limited Scope	0		*							
Ratings (# / %) Assigned to All Regulated Entities										
1	288	38.40%	*	*						
2	392	52.27%	*	*						
3	66	8.80%	*	*						
4 & 5	4	0.53%	*	*						
Noncompliance with Examination Priorities (Past Due)										
MSB	1		*							
PFC	0		*							
PCC	0		*							

NOTES:

* First quarter Fiscal Year 2022 data has not been finalized and will be provided in the division's next summary.

** PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

Examination Activities

NDS continues to primarily conduct all examinations remotely (off-site) and remains flexible when coordinating examinations with license holders. PFC and PCC examinations were effectively coordinated with license holders in 2021, with some examinations being conducted on-site.

The Texas Department of Banking (Department) continues to participate in various Multi-state MSB Examination TaskForce (MMET) and Money Transmitters Regulators Association (MTRA) working groups impacting MSB examination activities. Throughout calendar year 2021, the Department communicated regularly and coordinated MSB supervisory activities with other state regulatory agencies.

Although NDS has not finalized its analysis related to examination performance compliance, it is anticipated that all NDS performance measures will be met for the first quarter of fiscal year 2022.

Division Activities

- The division continues to hold various remote meetings with examination staff to keep lines of communication open and to provide timely notifications of upcoming events/news. Examiners are also provided the opportunity to present administrative and examination topics for discussion.
- On October 25th, a division staff member was a presenter at the annual convention of the Texas Cemeteries & Crematories Association. The annual convention discusses various concerns and issues relating to cemeteries and crematories in Texas.
- On November 29th, two division examiners participated in agency training provided by the Texas State Board of Public Accountancy. The training discussed law and regulations relating to the proper preparation of financial statements, the Texas Public Accountancy Act, and common problems in attestation services.
- In October and November, Department staff participated in a Money Transmitter Model Law (MSB Model Law) Workshop Series offered by the Conference of State Bank Supervisors. The series was designed to provide state regulatory agencies with additional knowledge and insight related to the implementation of the MSB Model Law.
- Division staff continues to monitor for, and investigate, activities conducted in non-compliance with applicable regulations. During this reporting period, NDS issued regulatory enforcement actions against entities offering and conducting MSB activities in violation of applicable rules and regulations to protect the rights and interests of Texas consumers
- In November, a MSB Financial Examiner with over 10 years of experience resigned. A posting to fill this vacancy was posted in November 2021.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

Memorandum

To: Finance Commission Members

From: Lori Wright, Director of Human Resources

Date: December 1, 2021

Subject: Summary of the Human Resources Division Activities

Human Resources Fiscal Year 2022 Activities

Active Postings				
Number of Positions	Position	Division	Status	Activities
1	Financial Examiner I-II <i>NDS-MSB</i>	NDS	Closing 01/05/2022	
1	System Support Specialist IV	MIS	Closing 12/10/2021	
1	Attorney II	Legal	Open Until Filled	
1	Programmer V	MIS	Open Until Filled	
1	Financial Examiner I-II <i>Assistant IT Security Examiner</i>	Bank and Trust	Closing 12/13/2021	Reposted
1	Financial Examiner VI-VII <i>IT Security Examiner</i>	Bank and Trust	Open Until Filled	
1	Financial Examiner V <i>Credit Review Specialist</i>	Bank and Trust	Open Until Filled	
1	Financial Examiner IV-V <i>Commercial Bank Examiner</i>	Bank and Trust	Perpetual Posting	
1	Financial Examiner VI-VII <i>Commercial Bank Examiner</i>	Bank and Trust	Perpetual Posting	

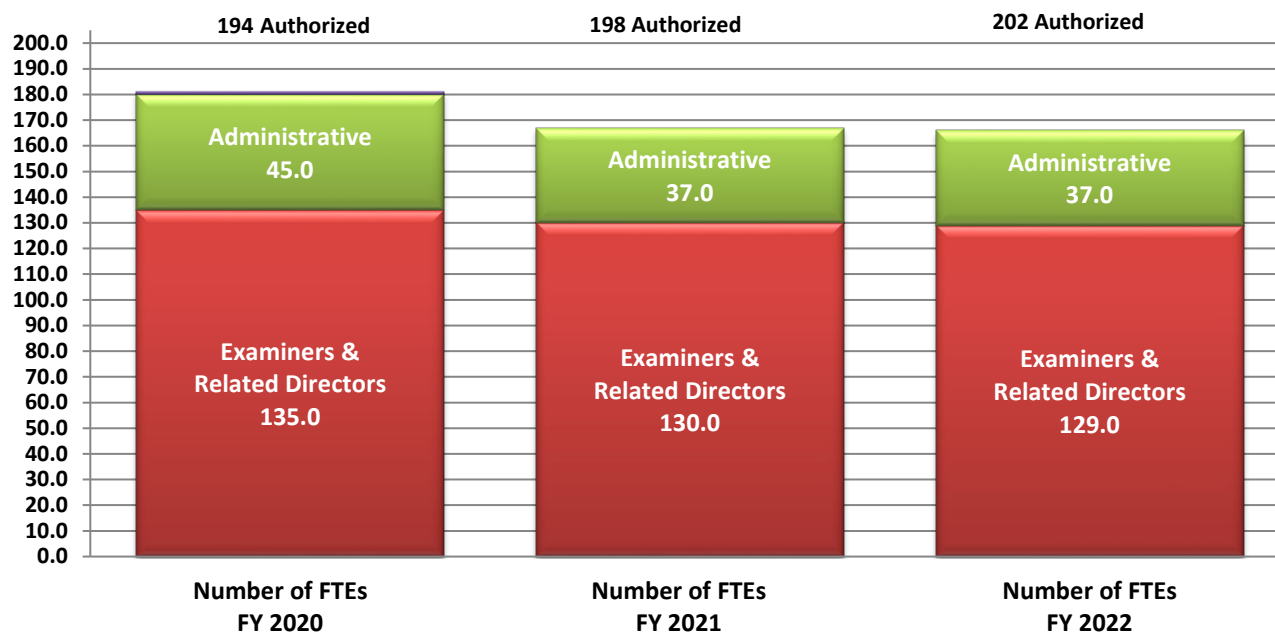
CAPPS

Attending CAPPS HR/Payroll meetings, providing information, and discussing business process needs.

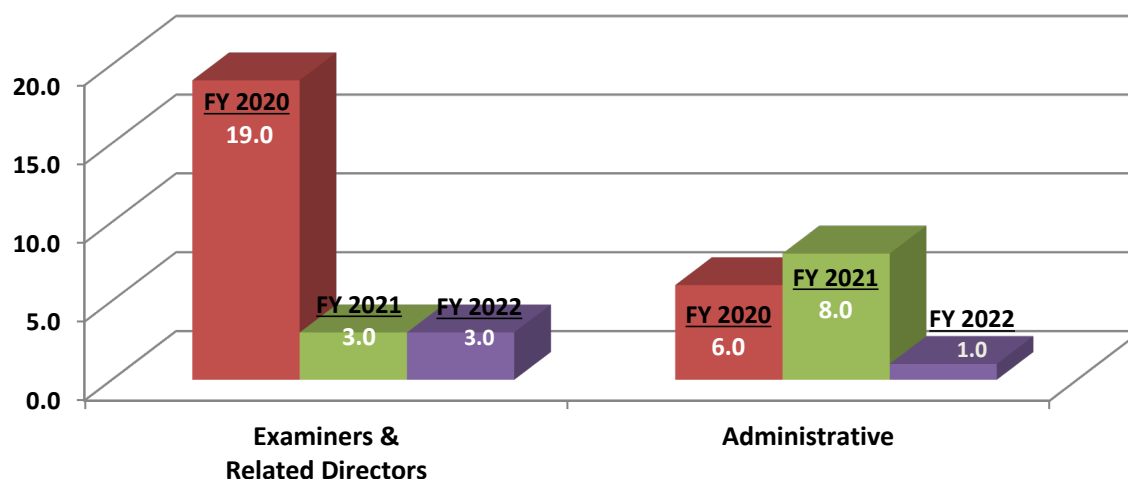
Staffing

Expanding recruiting efforts to address current job market.

Texas Department of Banking Employee Data for Fiscal Years 2020, 2021 and 2022 as of October 31, 2021

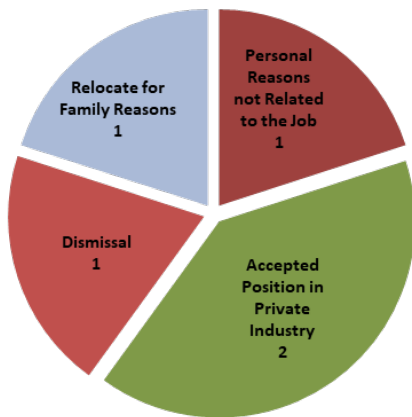


New Hire Data for Fiscal Years 2020, 2021 and 2022

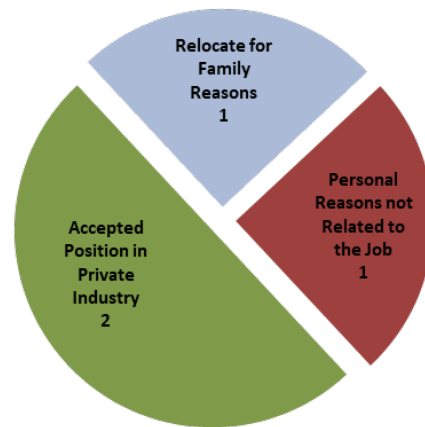


FY 2022 Employee Turnover Reasons

All Employees
5 Resignations



Financial Examiners Only
4 Resignation



As of 10/31/2021



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

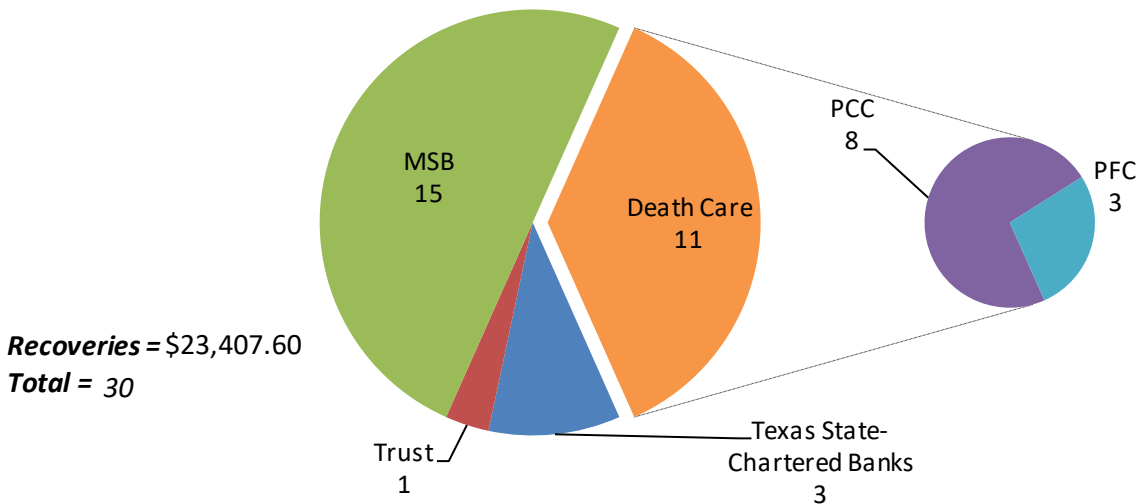
2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

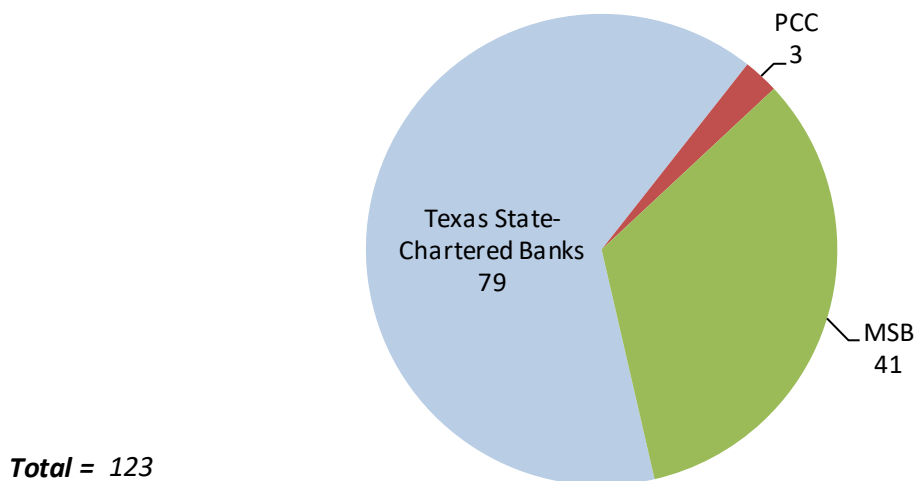
www.dob.texas.gov

To: Finance Commission Members
From: Phil Lena, Financial Analyst
Date: December 1, 2021
Subject: Summary of the Strategic Support Division Activities

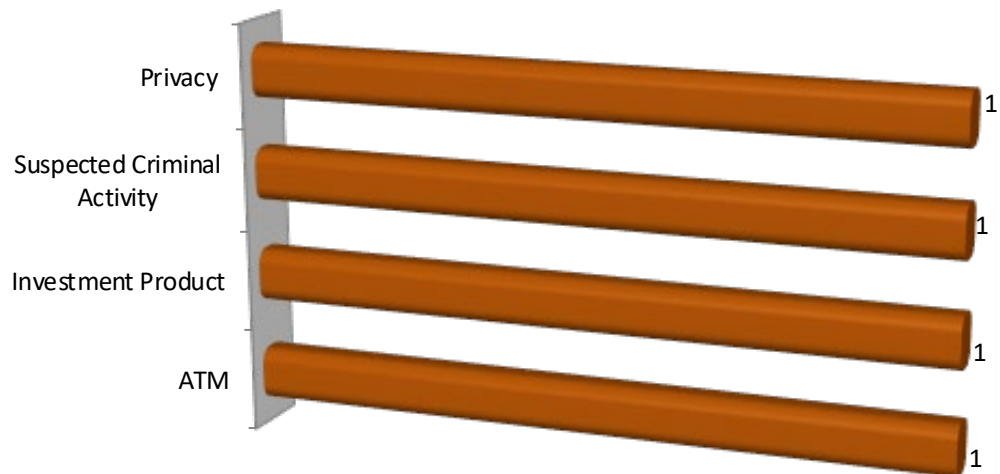
Jurisdictional Written Complaints September 2021-October 2021



Inquiries on Jurisdictional Entities September 2021-October 2021

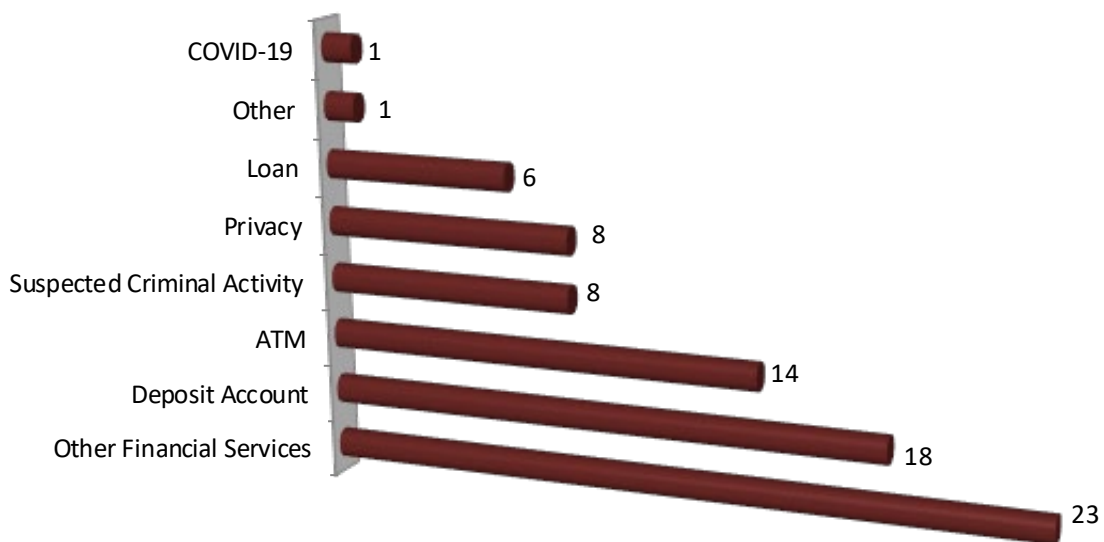


**State-Chartered Banks and Trust Companies
Written Complaints by Type
September 2021-October 2021**



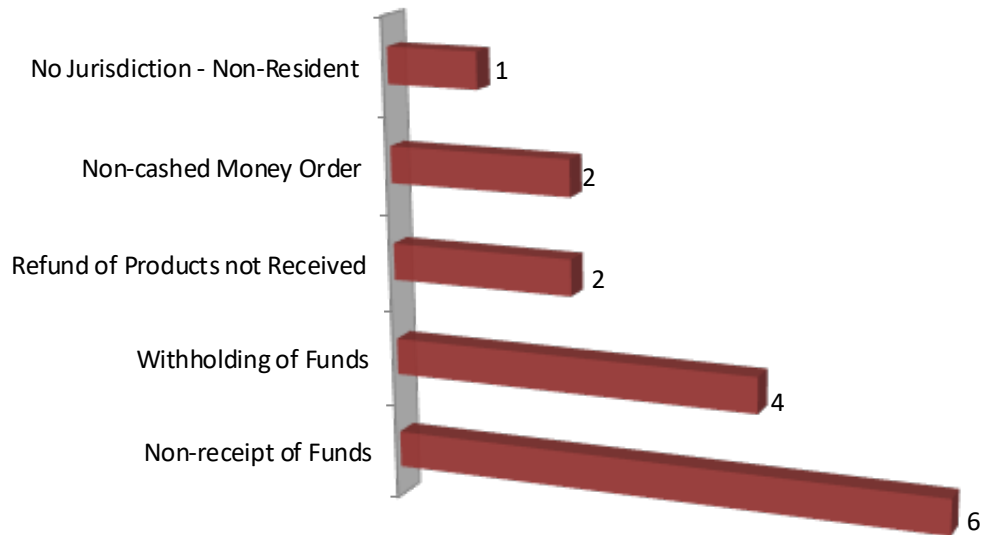
Total = 4

**State-Chartered Banks and Trust Companies
Inquiries by Type
September 2021-October 2021**



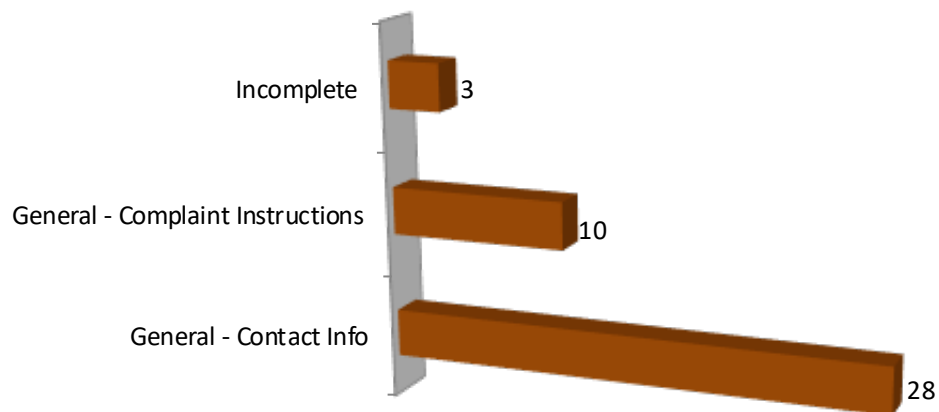
Total = 79

**Money Services Businesses
Written Complaints by Type
September 2021-October 2021**



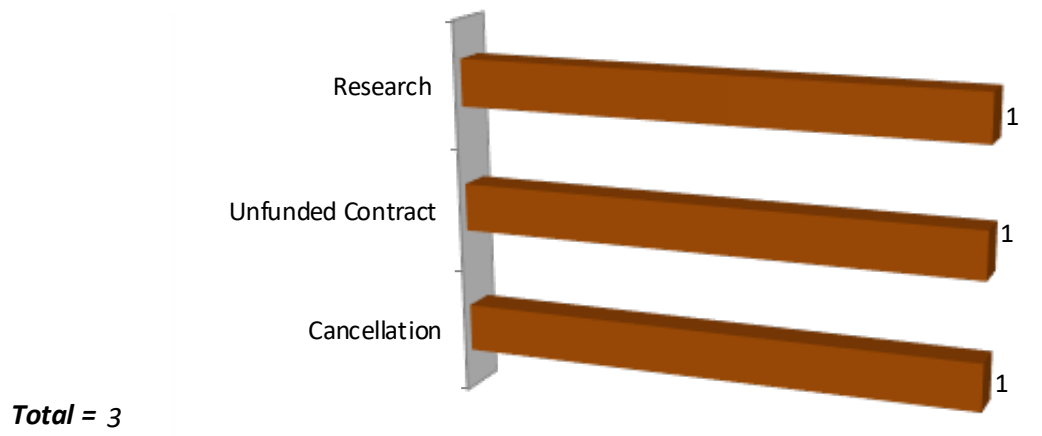
Total = 15

**Money Services Businesses
Inquiries by Type
September 2021-October 2021**



Total = 41

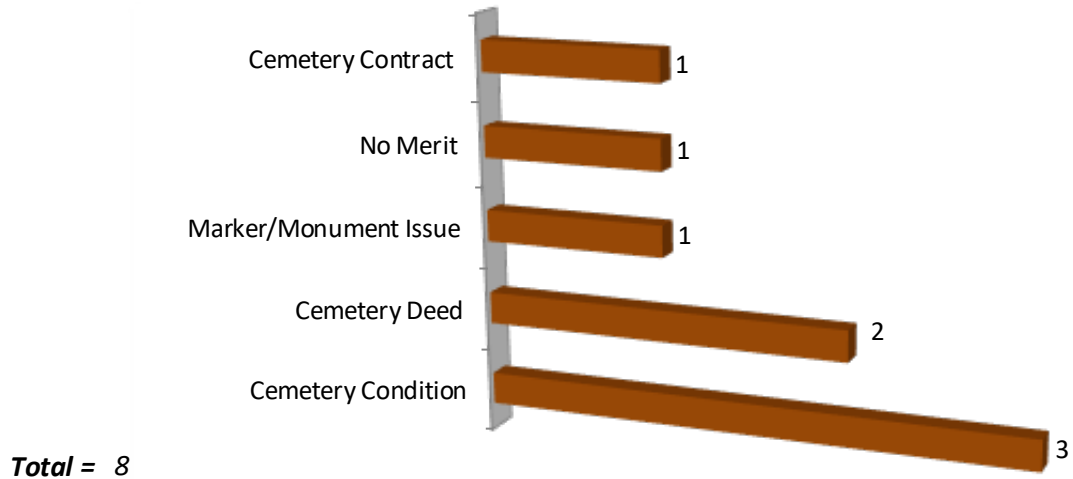
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2021-October 2021**



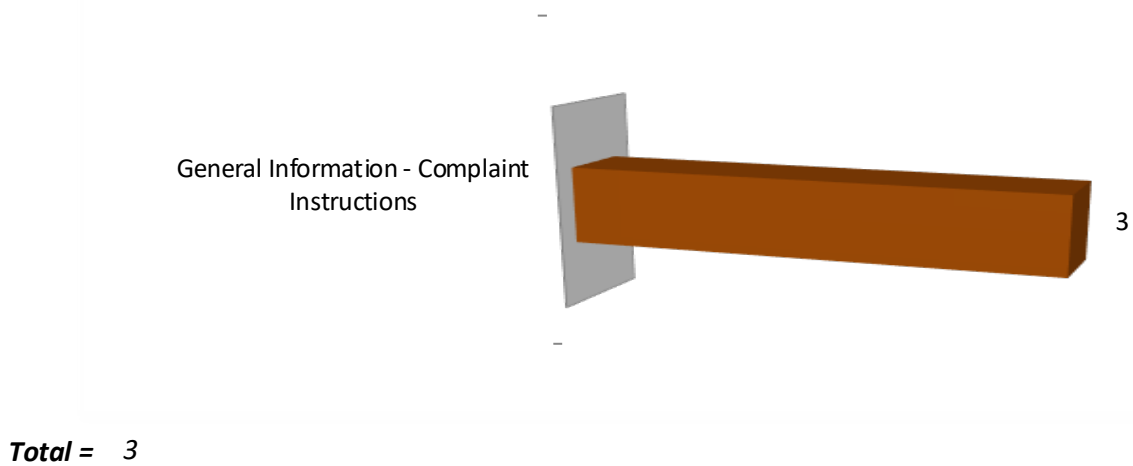
**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2021-October 2021**

No inquiries were reported during this period.

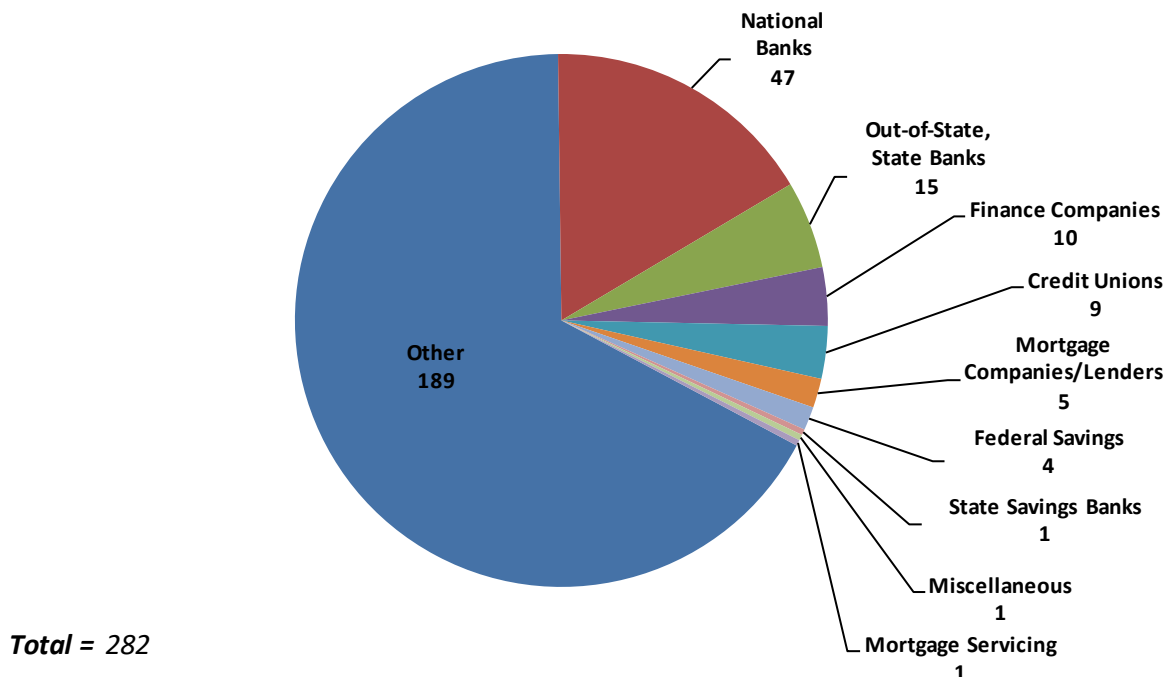
**Perpetual Care Cemeteries
Written Complaints by Type
September 2021-October 2021**



**Perpetual Care Cemeteries
Inquiries by Type
September 2021-October 2021**



Complaints and Inquiries Against Non-Jurisdictional Entities September 2021-October 2021



Often, consumers do not provide the name of the entity they need assistance with. In these situations, the communication is categorized in the "Other" category.

Complaint Activities Information by Quarter

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
State-Chartered Banks				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	N/A	N/A
Number of Written Complaints Resolved	N/A	N/A	N/A	N/A
Trust				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	N/A	N/A
Number of Written Complaints Resolved	N/A	N/A	N/A	N/A
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	N/A	N/A
Number of Written Complaints Resolved	N/A	N/A	N/A	N/A
MSB				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	N/A	N/A
Number of Written Complaints Resolved	N/A	N/A	N/A	N/A

First quarter data is not available.

Closed Account Notification System (CANS) Activity
January 1, 2018 – November 30, 2021

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	190	370
Texas State-Chartered Savings Banks	22	62
Federal Savings Banks	10	0
State Credit Unions	133	723
Federal Credit Unions	229	351
National Banks	171	113
Out-of-State State-Chartered Banks	12	111
Out-of-State National Banks	6	0
Total	773	1,730

Bank Examination Testing System (BETS) Activity
Number of Candidates Passing Each Phase

	FY 2019	FY 2020	FY 2021	FY 2022
I. General Knowledge	3	4*	6	1
II. Loan Analysis	5	7	1	1
III. Panel	5	10	3	1
IV. Test Bank	4	7	5	2
Total FE3	19	15	17	16

Promotions

Commissioned Examiners	5*	7	5	2
-------------------------------	----	---	---	---

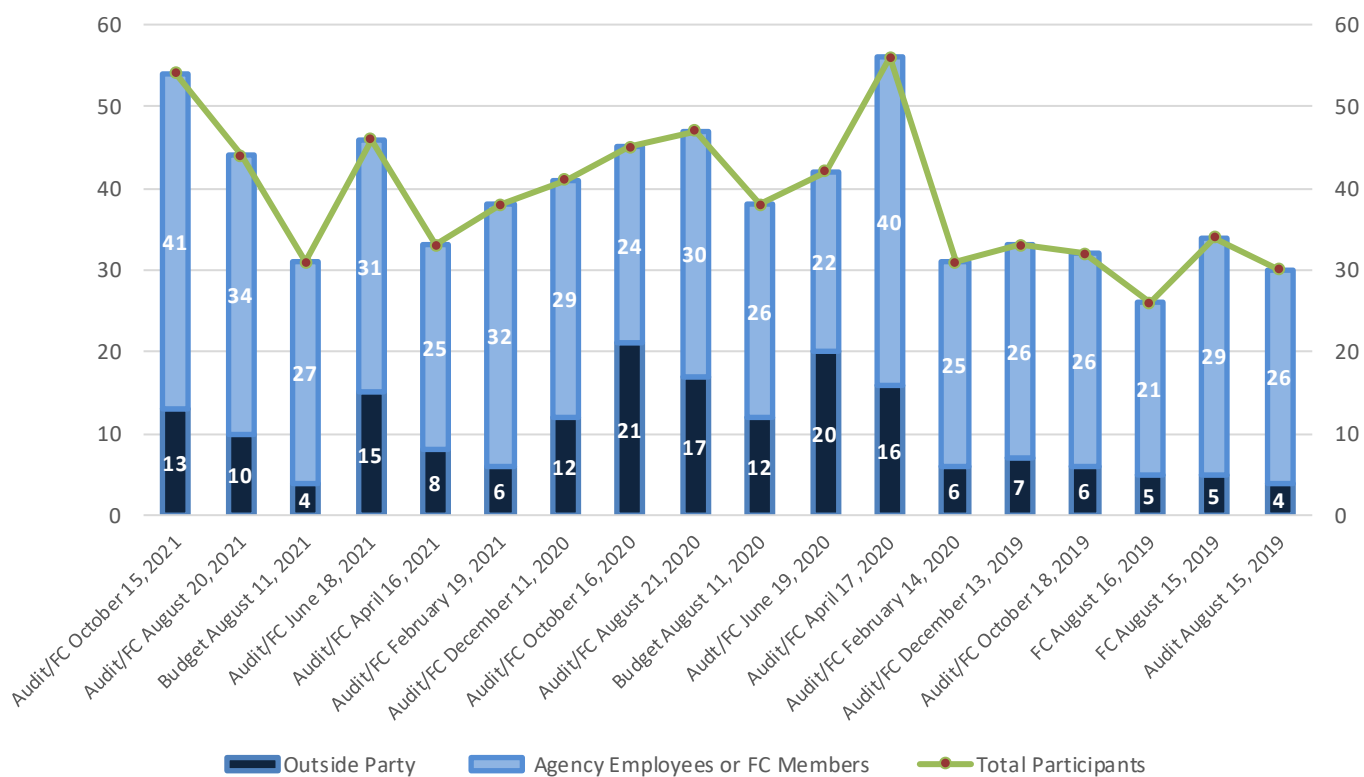
**Includes a FE V Credit Specialist*

Other Divisional Items:

- *Financial Education*
 - On November 18, 2021, 30 attendees participated in a 45-minute webinar providing a series of helpful tips on how to achieve a stress-free holiday shopping experience was hosted jointly by the Texas Department of Banking and the Office of the Consumer Credit Commissioner.
- *Third Special Legislative Session*
 - The Third Special Legislative Session ended on October 19, 2021. The special session concluded without the passage of any of the bills tracked by the Department related to the following agenda item: Legislation regarding whether any state or local governmental entities in Texas can mandate that an individual receive a COVID-19 vaccine and, if so, what exemptions should apply to such mandate.

- **Policy**
 - Supervisory Memorandum 1032 - Policy for Other Real Estate Owned (OREO) for State-Chartered Trust Companies (November 2021).
- **Examination Procedure Updates**
 - Planning and Control procedures for Commercial and Trust examinations (October 2021).
 - Wire Transfer and ACH procedure for IT examinations (November 2021)

Finance Commission Webcast Historical Data





Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: December 1, 2021
RE: Legal Division Update

Litigation

There are no pending litigation matters at this time.

Contested Case Hearings

In the Matter of Robert L. Green, Individually and as President of Green's Mortuary, and Green's Mortuary, Bay City, Texas; Docket No. BF-2101-20-215. Respondents, a funeral services provider and funeral home, are alleged to have sold prepaid funeral benefits to at least six Texas customers without the required permit. The Department had previously issued a Cease and Desist Order against Respondents on March 30, 2021. Staff is seeking \$25,099 in restitution for customers and a monetary penalty of \$18,000. Hearing on the merits is currently scheduled for January 20, 2022.

Orders Issued October 1, 2021 – November 30, 2021

During this time period, the Commissioner issued three enforcement orders, all of which are final and non-appealable:

Non-Depository Supervision

- Consent Order dated October 12, 2021; Cash Cloud, Inc. dba Coin Cloud, Las Vegas, NV
- Consent Order dated October 13, 2021; RAM Payment LLC, Knoxville, TN
- Consent Order dated November 22, 2021; Flutterwave, Inc., San Francisco, CA

Public Information Requests

From October 1, 2021 through November 30, 2021, staff received and responded to 23 requests for public information addressed to the Department of Banking, and received six inquiries from the "Ask a Question" feature. During the same period, we received and responded to one public information request addressed to the Finance Commission.

Gifts

No gifts were received during this reporting period.

FY 2021 Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
Consent Order	1	1	0	0
Cease & Desist	0	0	1	0
Supervision	1	0	0	0
Prohibition	0	1	1	0
Total	2	2	2	0
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	0	0	0	0
Total	0	0	0	0
Consent Order	7	5	3	1
Cease & Desist	0	0	0	0
Final Order after hearing	0	0	0	0
Total	7	5	3	1
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Refusal to Renew Cert/Auth	0	0	0	0
Final Order after hearing	0	0	0	0
Total	0	0	0	0
Consent Order	0	0	0	0
Cease & Desist	0	0	1	0
Total	0	0	1	0

Projected Future Rule Actions:

February 2022

7 TAC Ch. 3 – Rule Review

7 TAC Ch. 33 – Rule Review

7 TAC Sec. 3.22 – Sale or Lease Agreements with Bank Insiders

7 TAC Sec. 17.3 – Sale or Lease Agreements with Trust Company Insiders

Rebecca Ann Motley

Rebecca Ann Motley has been a funeral consumer advocate for over 10 years in the Dallas-Fort Worth area, as well as representing consumers statewide in the capitol and legislature. Ms. Motley's focus is to help the underserved and vulnerable of us who need help during the period of grief and transition of the deathcare experience.

Rebecca serves on the Board of Directors of the Funeral Consumers Alliance of North Texas and has responded to hundreds of consumer questions over the years by telephone, email and in person. She has also helped teach a recurring retired seniors course on deathcare at Richland College in Dallas, Texas.

Ms. Motley currently serves the Consumer Representative on the Texas Department of Banking Guaranty Fund Advisory Council. She has actively participated in its meetings, issues, and progressive changes. Complicated consumer issues have arisen concerning Prepaid Funeral Contracts that have benefited from the consumer advocacy perspective; to find a fair and just solution.

As a grandmother, mother and spouse, Rebecca spends her special time with grandkids, art, healthy cooking, landscaping, and good books. Her passion is serving others with a warm heart and thoughtful conversations.

Amy Biggs

Amy Biggs is the Vice President of Operations for Funeral Directors Life Insurance Company. Funeral Agency, Inc., an affiliate of Funeral Directors Life, has had an insurance funded prepaid funeral benefits permit with the Department since 1982. Amy has over 20 years managerial and supervisory level experience as an operations supervisor at Funeral Directors Life with emphasis in new business underwriting, commissions, prepaid funeral contracts, and policy administration. Amy's analytical, organizational, and planning skills are an asset to the funeral homes, agents, and policyholders she serves. In her current role with Funeral Directors Life, Amy oversees the daily operations including Claims, New Business, Customer Care, and Document Processing departments. Amy attended Cisco College and enjoys volunteering with Meals on Wheels and the Jim Ned Valley Heritage Preservation.

D.

**Office of Consumer Credit
Commissioner**

This page left blank intentionally.



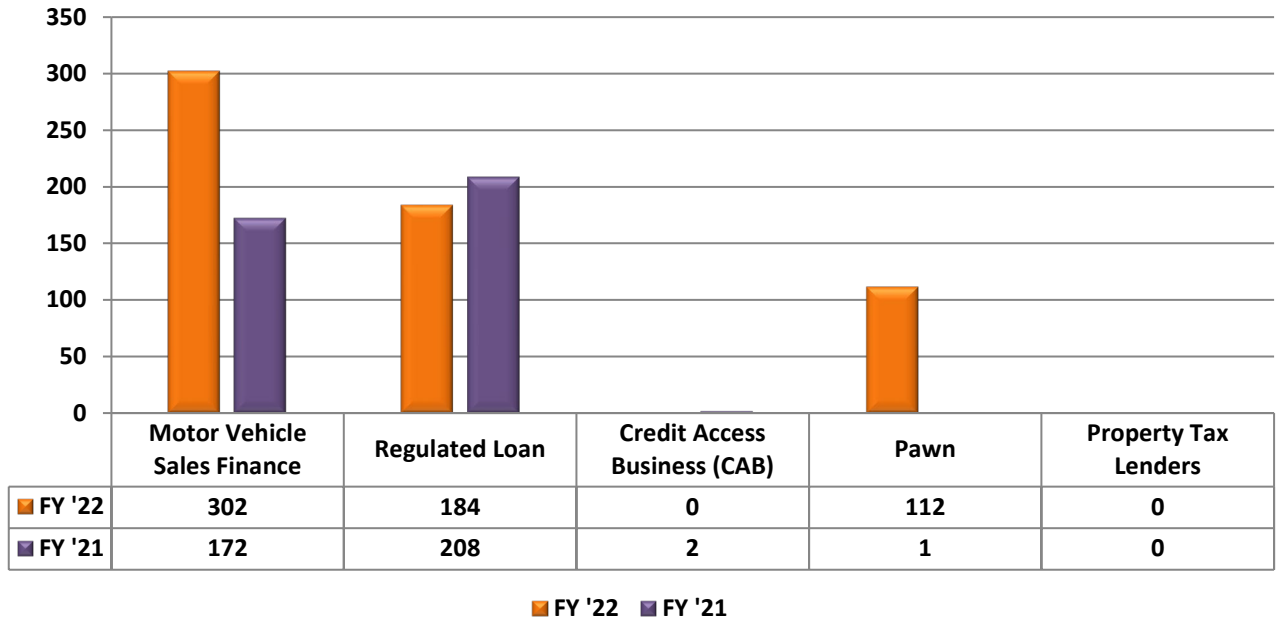
Consumer Protection and Consumer Assistance Report

The OCCC's examination program is on track. Twenty six percent of the targeted number of examinations have been completed as of the end of the first quarter of Fiscal Year 2022. The field work of an examination of a large enterprise property tax lender was completed in November. This examination report is in the final stages of writing and editing. The planning and scoping of a large enterprise Credit Access Business is in progress with field work scheduled to begin February 1, 2022. The agency completed and delivered a report related to a coordinated multi-state auto finance exam in November. A coordinated examination between the states and the Consumer Financial Protection Bureau (CFPB) has also been concluded. The OCCC served as both single point of contact (SPOC) and project examiner in charge (EIC) roles on this examination. A second multi-state auto finance exam is well underway. The OCCC is also serving in the leadership roles of SPOC and EIC on this exam. Further the completion of the OCCC's participation in a multi-state mortgage examination occurred in October. The report of exam is currently under review by the multi-state mortgage committee.

The OCCC has committed to participate in a multi-state auto finance exam scheduled to begin in January 2022. This examination will be a coordinated examination with the CFPB. The OCCC will be in a leadership position again on this multi-state auto finance examination, serving as the single point of contact (SPOC) between the CFPB, the states, and the subject company. In addition, the OCCC has committed to participate in another multi-state mortgage examination scheduled to begin in January 2022.

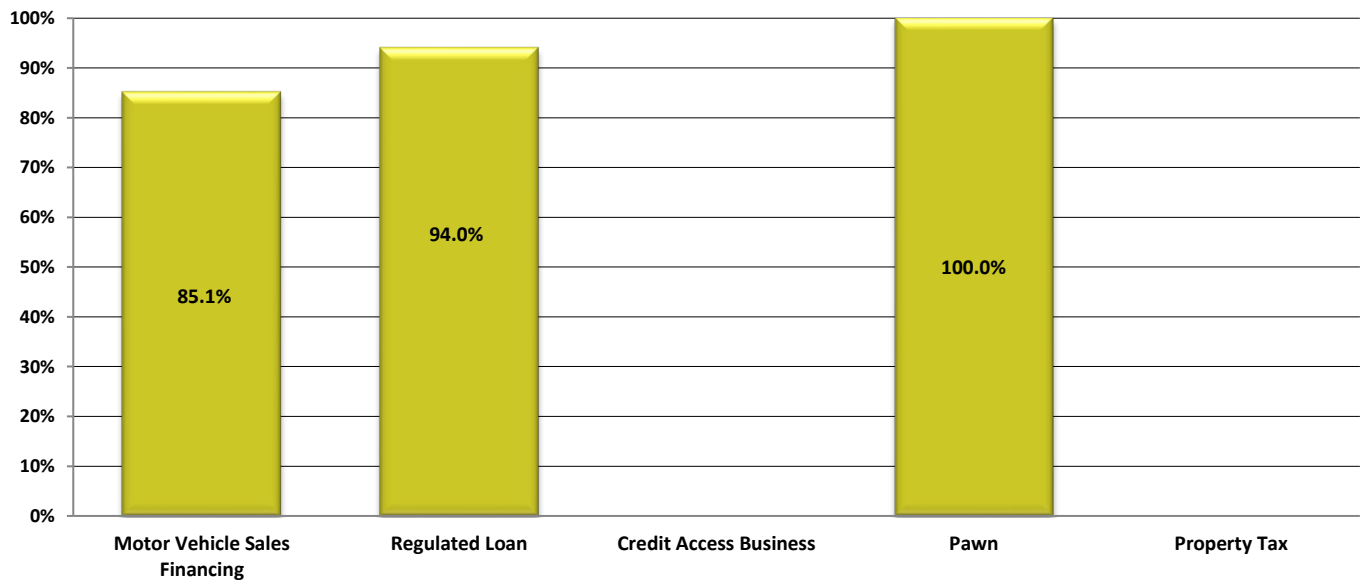
Staff training and development remain a high priority focus. The three Financial Examiner (FE) I's hired August 2, 2021 are now certified in pawn shop and 342-F examinations. They have begun their field training in motor vehicle sales finance examinations. Their motor vehicle sales finance examination certifications are targeted for the end of the second quarter (February 2022). Seven tenured examiners (FE III's) participated in the enterprise property tax examination mentioned above. This was their first property tax exam exposure. The examination was managed by a Senior Examiner, mortgage/property tax exam specialist. Focused just-in-time training was provided as part of the exam planning. Additional on-site training and oversight assistance was provided by the remaining Senior Examiners, who all have significant mortgage and property tax exam experience.

Examinations Conducted: Sept - Oct Fiscal Year Comparison

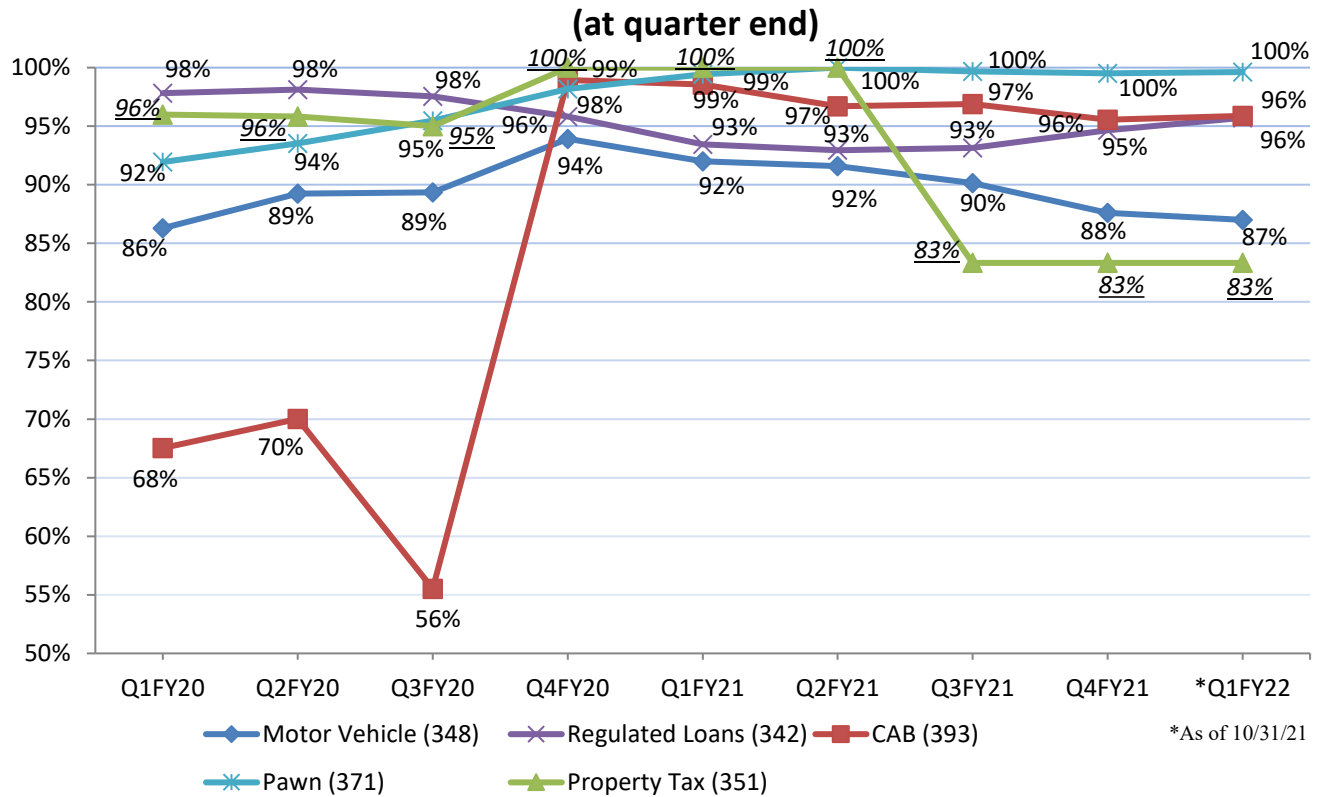


The second chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of October 2021.

Acceptable Level of Compliance FY '22 (Sept 2021 - Oct 2021)



Acceptable Compliance Levels - Trailing 12 Months



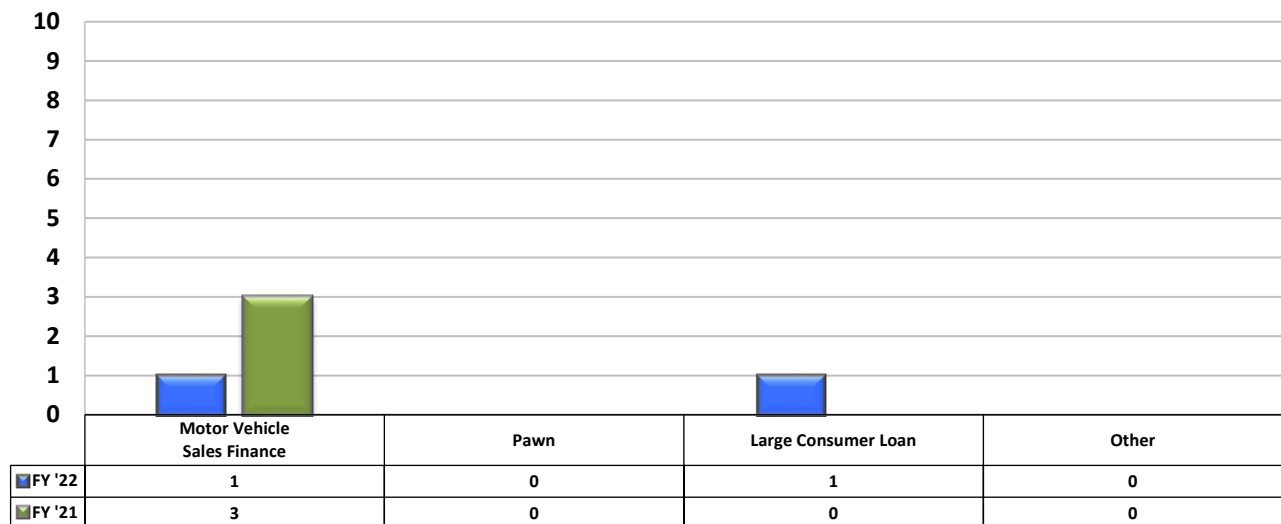
Investigations

For FY 2022, the OCC completed 2 investigations of the goal of 75. Motor Vehicle Sales Finance comprises 50% of the overall number of investigations.

Investigations Completed

FY '22 (Sept 2021 - Oct 2021) Total: 2

FY '21 (Sept 2020 - Oct 2020) Total: 3

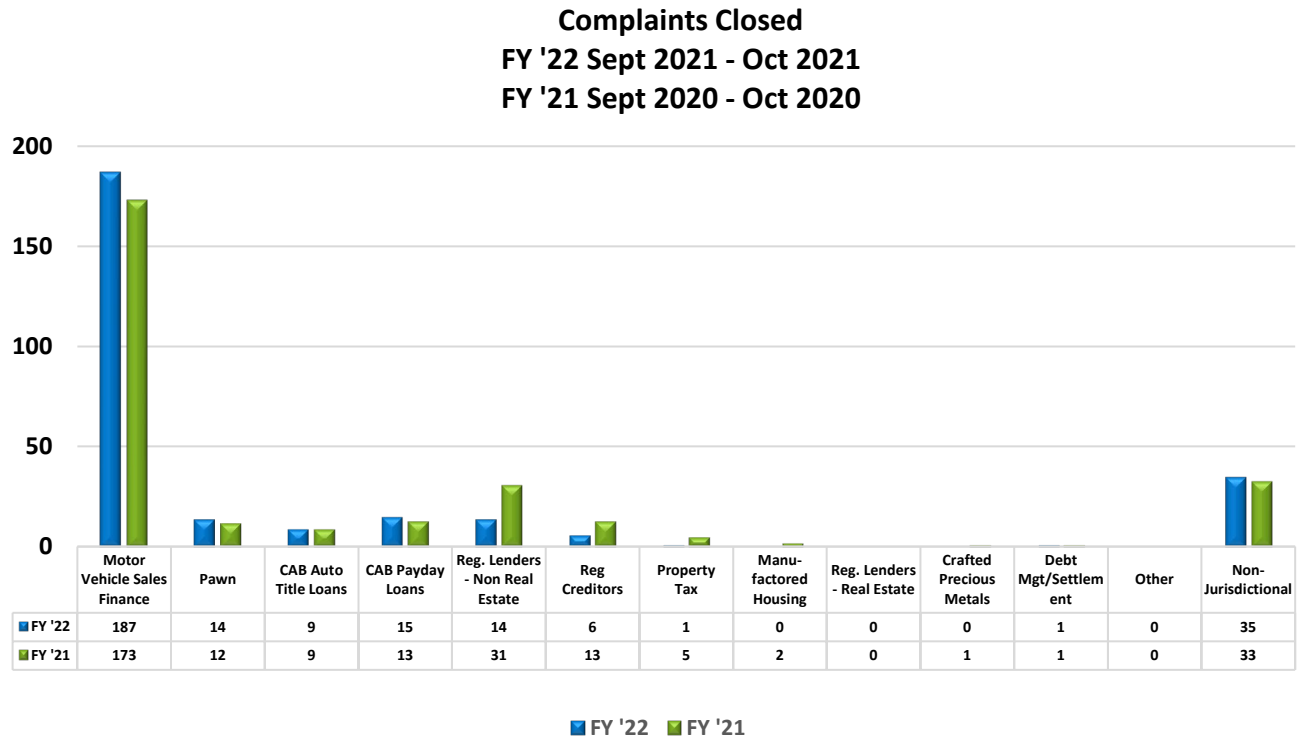


Consumer Assistance

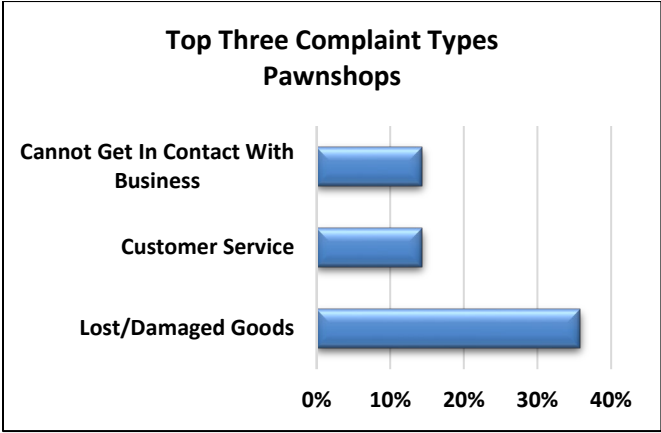
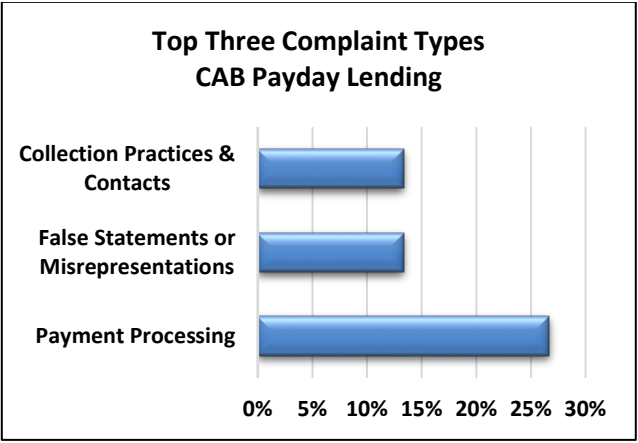
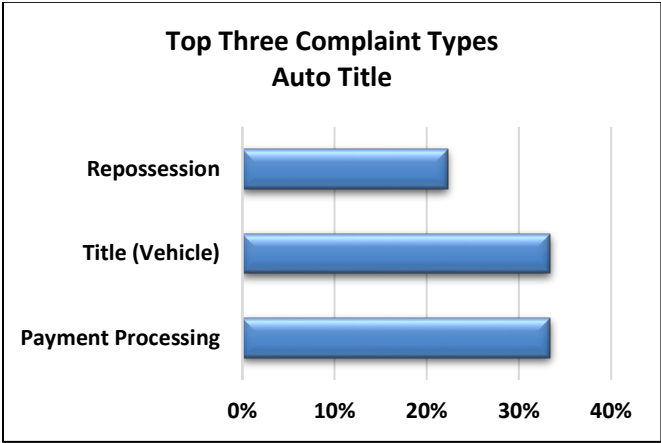
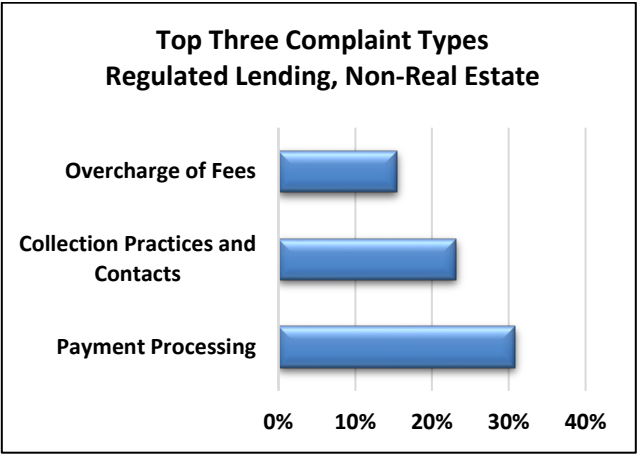
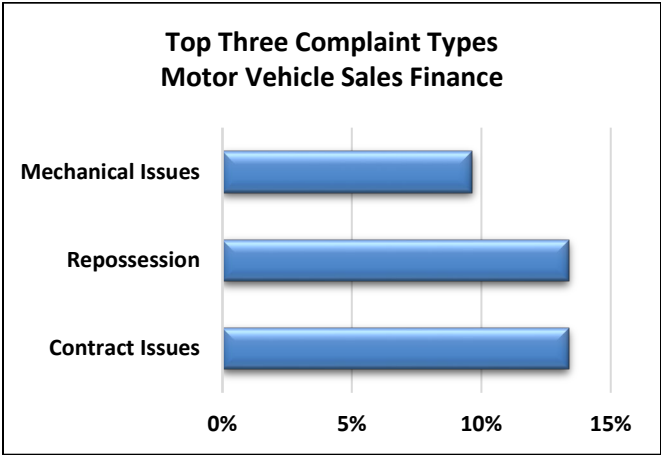
For this period, 282 complaints were closed of which 35 were classified as non-jurisdictional.

The top four areas of jurisdictional complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Businesses, (3) Regulated Lenders, Non-Real Estate, and (4) Registered Creditors.

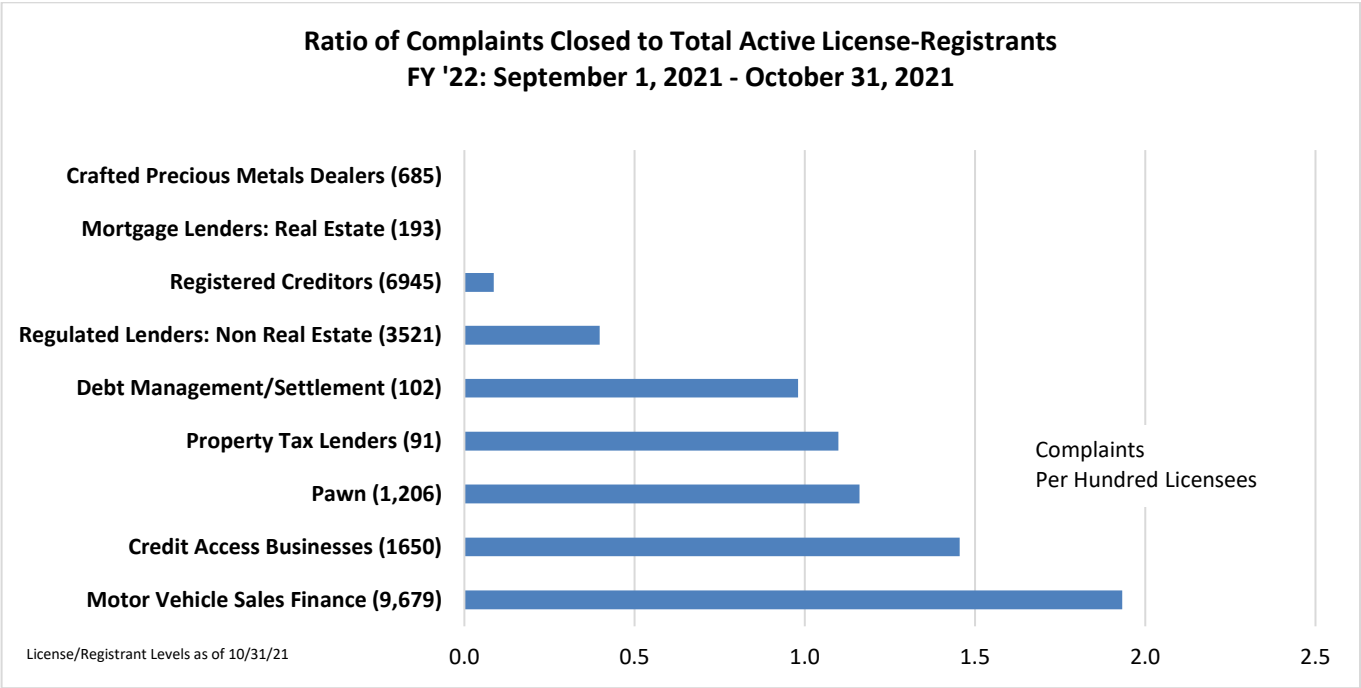
MVSF complaints were the largest complaint category at 66.3%. The second largest category was CAB complaints at 8.5% collectively; separately, there were 5.3% for payday loans and 3.2% for title loans. The third largest number of complaints came from Regulated Lenders, Non-Real Estate at 4.9%. The fourth largest complaint category was Registered Creditors at 2.1%.



Each of the following charts represent the three top complaint areas per license type:



Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio of complaints to active license/registrants was Motor Vehicle Sales Finance, followed by Credit Access Businesses, Pawn, and Property Tax Lenders.



CAB Reporting Update

Summaries of CAB reports through the third quarter of 2021 are available on the OCCC website. Presented are selected statistics of first and second quarter reports compared with previous years. New loan origination in 2021 has seen marginal recovery after the dip in originations in 2020, having increased 3.5% through the first nine months of the year. Installment payday loans made up 72% of all new payday loan originations in the first half of the year. Repossessions in in Q3 2021 have decreased 38% from last quarter but are still up 21% for the year compared to 2020.

Data Highlights (All Loan Types) Q1-Q3 Comparison	2021	2020	2019	2018	2017	2016
Number of new payday loans	1,131,406	1,093,086	1,612,428	1,563,242	1,598,074	1,693,477
Number of new auto title loans	147,878	141,051	215,925	245,826	214,454	208,922
Percentage of payday loans due in multiple installments	72%	63%	56%	52%	45%	41%
Percentage of auto title loans due in multiple installments	45%	53%	60%	54%	41%	39%
Number of vehicles repossessed under all auto title loans	31,312	25,916	32,763	27,210	23,052	24,494
Total number of locations reporting activity	1,837	2,026	2,034	1,999	2,113	2,424

Payday Loans Q1-Q3	Single Installment			Multiple Installment		
	2021	2020	2019	2021	2020	2019
Number of consumers obtaining loans	215,069	276,902	488,908	727,819	616,723	820,017
Number of new loans	313,417	399,241	702,074	817,989	693,845	910,354
Number of total refinances ¹	274,589	492,241	780,786	162,596	169,297	280,023
Average loan amount	\$494	\$453	\$451	\$559	\$595	\$572
Average fee per \$100 borrowed	\$24	\$23	\$23	\$128	\$136	\$139
Average original term (in days)	21	21	22	142	148	150
Average Fee Converted to a Daily Rate ²	1.15%	1.10%	1.06%	0.90%	0.92%	0.92%

Title Loans Q1-Q3	Single Installment			Multiple Installment		
	2021	2020	2019	2021	2020	2019
Number of consumers obtaining loans	63,297	52,612	76,504	63,075	69,913	123,405
Number of new loans	81,059	66,727	85,083	66,837	74,324	130,842
Number of total refinances ¹	319,415	370,125	471,157	65,516	95,402	117,913
Average loan amount	\$1,818	\$1,430	\$1,689	\$1,621	\$1,251	\$1,261
Average fee per \$100 borrowed	\$15	\$15	\$15	\$106	\$112	\$116
Average original term (in days)	31	30	29	161	158	156
Average Fee Converted to a Daily Rate ²	0.49%	0.50%	0.52%	0.66%	0.71%	0.75%

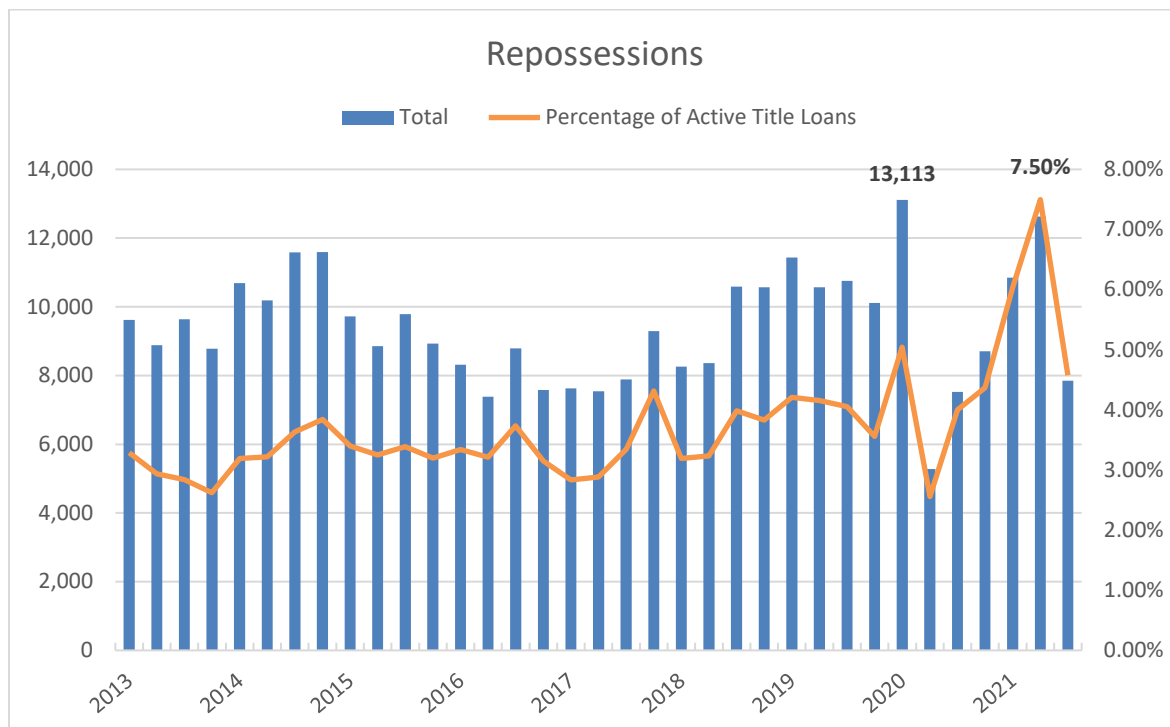
¹ Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.

² Based on averages, per dollar borrowed a consumer would pay this percentage per day. The APR could be approximated by multiplying this rate by 365; however, it could be significantly higher if the multiple installment loans reduce principal with each payment and the total fees remain the same.

Additional Repossession Information

Quarterly report CAB data capturing repossessions began Jan 1, 2012. Repossessions slowed considerably in the last three quarters of 2020 due to Covid-19 related measures (creditor concessions and pandemic assistance to taxpayers). The number of repossessions reached an all-time low of 5,282 in the second quarter of 2020. The number of repossessions increased in the second quarter of 2021 to 12,627 representing the second highest reported quarterly. The historical average number of repossessions is 9,408 per quarter and a repossession rate of 3.71% of accounts.

The second quarter of 2021 also represented the highest percentage of repossessions per active account at 7.50%. The third quarter repossession totals reduced to 7,849 but the repossession rate of 4.58% is still above historical averages.





Licensing Report- December 2021

Renewals

Renewal for motor vehicle sales finance licenses and commercial motor vehicle sales finance licenses closed October 31, with 91% of the industry group renewing their license.

The department is currently going through the renewal period for credit access businesses, regulated lenders, and property tax lenders. Renewal for these industry groups opened early online in November and will continue through December 31. Regulated lenders received a discount of 50% on the annual assessment. Credit Access businesses received a discount rate of 15% on their renewal assessment.

Registration renewal for crafted precious metal dealers and refund anticipation loan facilitators is also ongoing.

Applications Processing

The volume of incoming applications is at 175 monthly on average in FY 2022, holding steady as related to prior fiscal years. Pawn employee application processing stands at 32 applications monthly on average.

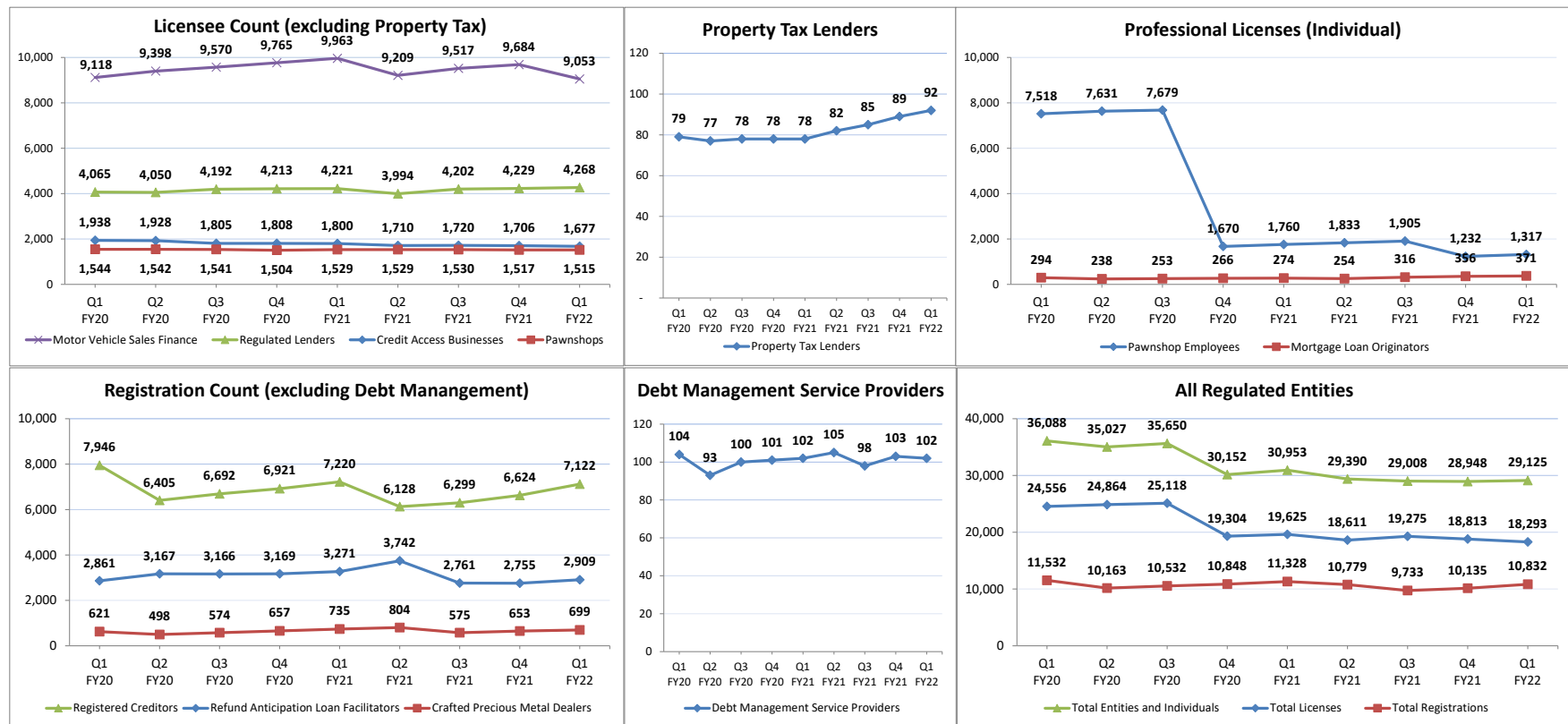
Other Updates

The department worked this month with IT in developing and testing changes to ALECS to capture the identification of crafted precious metal dealers that meet the new statutory definition of “jewelry store” as this information is necessary for the deploying the new examination mandate. The department is also assisting with collecting the recently adopted increase in volume fees for Property Tax Lenders.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2020 and 2021 to current data.

Number of OCCC Regulated Entities Quarterly Comparison of FY20-22





ADMINISTRATION REPORT

FINANCIAL EDUCATION AND TFEE

The Financial Education Department continues to promote financial education outreach and educational opportunities. Since the last report, the OCCC partnered with the Department of Banking to conduct a “Holiday Spending” webinar and has conducted additional credit and budgeting webinars. The OCCC is also working with the Texas County and District Retirement System to host a series of financial education webinars in the spring. Additionally, with the departure of the Grant and Financial Education Coordinator, the Financial Education Supervisor is in discussions with Texas JumpStart to ensure the OCCC’s continued support of Texas JumpStart’s initiatives.

The 4th and final semi-annual reports and reimbursement requests for the 2020-2021 TFEE grant cycle are due January 30, 2022. The 2022-2023 grant cycle begins on January 1, 2022. OCCC staff has recommended the Finance Commission appoint and reappoint members to the Grant Advisory Committee (GAC).

COMMUNICATION

The OCCC continues to communicate with stakeholders through presentations and written publications. Agency staff provided virtual presentations to regulated entities and other regulatory groups as follows:

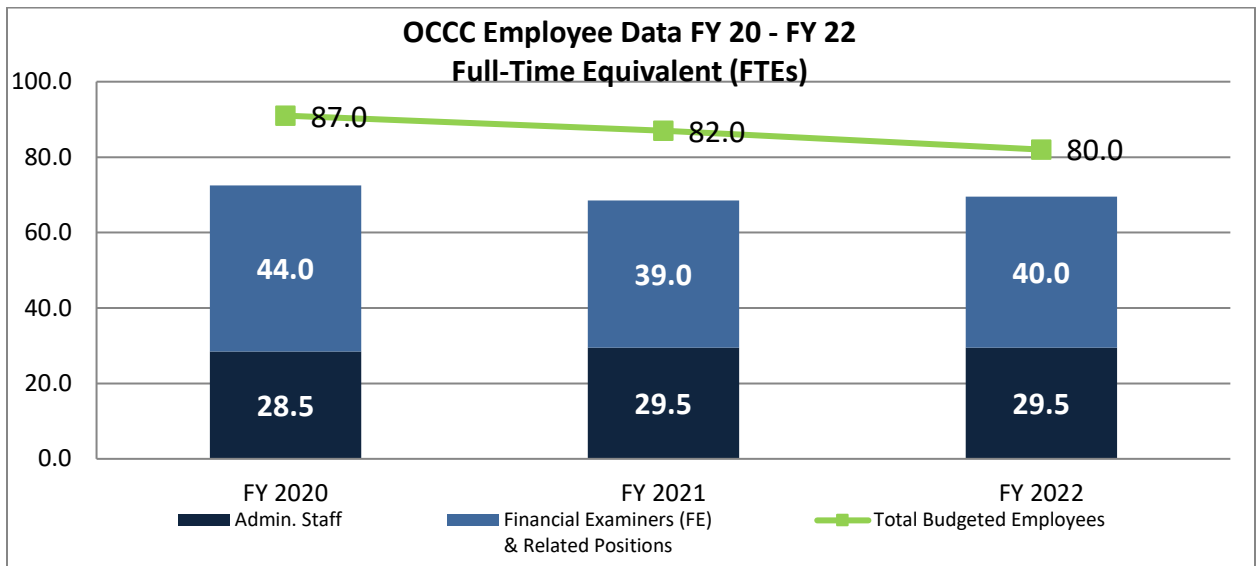
- On October 7, 2021 Financial Examiner Eric Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On November 11, 2021, Financial Examiner Eric Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On November 16, 2021 Commissioner Pettijohn, Deputy General Counsel Matthew Nance, Senior Paralegal Ginger Harmon, Associate General Counsel Audrey Spalding, Director of Consumer Protection Huffman Lewis, Supervising Financial Examiner Karl Hubenthal, and Senior License and Permit Specialist Kanesha Daniels conducted a Debt Management Rule Review webinar.
- On November 16, 2021 Commissioner Pettijohn, Deputy General Counsel Matthew Nance, Senior Paralegal Ginger Harmon, Associate General Counsel Audrey Spalding, Director of Consumer Protection Huffman Lewis, and Senior License and Permit Specialist Kanesha Daniels conducted a Crafted Precious Metal Dealer Fee Adjustment webinar.

HUMAN RESOURCES

During this reporting period from August 2021 to the end of November 2021, the OCCC was staffed with a total of 69.5 FTEs. Currently OCCC has the following open positions.

Vacancy	Status
License and Permit Specialist III	Open - 1
Investigator I	Open - 1
Program Specialist III – Financial Education, Grant, & Communications Specialist	Open - 1

The following chart compares administrative staff vs. financial examiners (FEs) for the last three fiscal years.



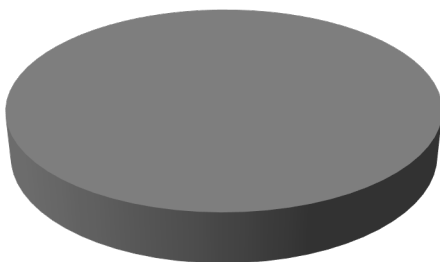
The turnover rate as of November 2021 is 1.4%, and the chart below represents FY22 data.

OCCC Turnover Categories

FY 22 - All Employees

(09/01/2021 - 11/30/2021)

1 total - 1 Interagency Transfer.



■ Interagency Transfer

OCCC Turnover Categories

FY 22 - FE Series

(09/01/2021 - 11/30/2021)

0 total -

None to report at this time for FY22

OCCC employees are following annual required policies and updates. Policies are regularly monitored to ensure compliance with local, state and federal law. HR continues to monitor health and safety measures for staff working in the Austin headquarters.

INFORMATION TECHNOLOGY

Cybersecurity

The semi-annual review of agency personnel accesses into the several Comptroller of Public Accounts' systems was completed, appropriate adjustments made, and the attestation submitted.

Hardware and technology deployment

As of mid-October, all field and Austin staff (other than IT) have newly- or recently-provisioned laptops, well within hardware life cycles.

Migration to the new server host was completed.

The Consumer Assistance Services (CAS) suite suffered a water leak (unit upstairs failed), which caused the local stack power supply to short out. A replacement unit was procured and installed after the water damage was repaired. CAs personnel relocated to Austin main office hotel spaces until the suite was repaired.

Web & software

The "hotel reservation system" provided for visiting employees to secure a workstation while in Austin is a success and has met expectations.

ALECS

The new programming build for Crafted Precious Metal Dealers (CPMD), per legislation, was live in production prior to December 01 introduction date to accommodate submission of new information upon renewal related to the new examination mandate.



Accounting Report- December 2021

CAPPS

The department is utilizing CAPPS financials for all FY 22 financial transactions. The department is troubleshooting issues during this implementation phase and have begun utilizing the Application Service Provide Solution Center ticket system. The meeting and discovery sessions of CAPPS HR/Payroll continues. This system will launch in Summer 2022.

Procedures

Procedures for travel have been updated as a result of the Garza/Gonzalez internal audit. The department continues to update accounts payable, purchasing, asset management, deposit and other procedures as a result of the CAPPS financial system implementation.

Other Items

The accounting department continues to work with the State Auditor's Office on the SDSI audit and continues to provide documents or observation sessions as requested.

Work on preparation of 1099 and W-2 tax documents for the end of 2021 has begun. The department also recently completed a draft of the FY21 Annual Report of Non-Financial Data, which is due December 31.



Legal Department Report

Michael Rigby, General Counsel

December 2021

Enforcement Report

Contested Cases

The OCCC currently has two cases pending before the State Office of Administrative Hearings (SOAH):

Clay Cooley Entities (SOAH Docket No. 466-22-0322)

Texas law allows motor vehicle retail sellers to charge a documentary fee for processing documents relating to the sale of a vehicle. Before charging a documentary fee over \$150, a seller must notify the OCCC and provide a cost analysis showing that the fee is reasonable. Duncanville N LLC and nine other Clay Cooley entities filed for documentary fees ranging from \$199 to \$299. After reviewing the cost analyses for these entities, the OCCC determined that these documentary fees were unreasonable. On September 9, 2021, the OCCC issued an Order to Reduce Documentary Fees and Make Restitution against the Clay Cooley entities. The Clay Cooley entities requested a hearing on the order, and a hearing was scheduled before SOAH. On November 8, the administrative law judge granted the Clay Cooley entities' unopposed request to conduct an in-person hearing. On November 19, the administrative law judge granted the parties' agreed motion for continuance, and scheduled the hearing for April 26–28, 2022.

PrimaLend Capital Partners, LP and Good Floor Loans LLC (SOAH Docket No. 466-21-1015)

In April 2021, the OCCC issued an Amended Order to Cease and Desist Unlicensed Activity, Take Affirmative Action, and Make Restitution, alleging that PrimaLend and Good Floor engaged in unlicensed activity by acting as holders and transferees of motor vehicle retail installment contracts, and by making false representations of their rights under contracts. PrimaLend and Good Floor requested a hearing on the amended order. On July 12, both sides filed motions for summary disposition requesting that the administrative law judge rule on whether PrimaLend and Good Floor engaged in unlicensed activity. On November 23, the administrative law judge ruled in favor of PrimaLend and Good Floor, denying the OCCC's motion and generally granting PrimaLend's motion. The judge generally found that PrimaLend and Good Floor had not exercised rights to receive payments, and therefore had not engaged in unlicensed activity by acting as holders of retail installment contracts. On November 30, after reviewing the judge's ruling, the OCCC withdrew the amended order against PrimaLend and Good Floor.

Orders on Reporting Violations

In October 2021, the OCCC issued ten orders against pawnshops that did not timely and accurately file their 2020 annual reports by the deadline of July 31, 2021. Of these orders, four were injunctions requiring the licensees to file timely and accurate reports, and six imposed an administrative penalty for violating a previous injunction.

Performance Report

The following table includes data on performance measures the legal department is tracking.

September 1, 2021 through November 30, 2021	
Cases Opened	23
Cases Closed	68
Average Number of Days to Close an Enforcement Action	89
Contested Cases Referred to SOAH	1
Contested Cases Heard at SOAH	0
Final Orders Issued	65

The OCCC has two upcoming SOAH hearings described above.

The following table summarizes enforcement actions closed by the OCCC during the last four fiscal years. These figures reflect enforcement actions that have been fully resolved by formal order, informal resolution, or dismissal. Actions that are still pending are not included in the table.

Enforcement Actions Closed as of November 30, 2021				
	FYTD 2022	FY 2021	FY 2020	FY 2019
Injunction Actions				
Crafted Precious Metal Dealer	0	0	1	0
Credit Access Business	8	33	27	53
Debt Management Provider	0	10	9	10
Manufactured Housing	0	0	0	0
Motor Vehicle Sales Finance	2	11	54	20
Motor Vehicle Sales Finance Commercial	0	1	0	0
Pawnshop	0	48	44	82
Pawnshop Employee	0	0	0	67
Property Tax Lender	0	2	1	8
Registered Creditor	0	0	1	0
Regulated Lender	32	28	49	22
Residential Mortgage Loan Originator	0	0	0	0
Total Injunction Actions	42	133	186	262
Administrative Penalty Actions				
Crafted Precious Metal Dealer	0	0	1	0
Credit Access Business	2	12	11	14
Debt Management Provider	0	2	3	0
Motor Vehicle Sales Finance	2	8	13	19
Pawnshop	0	15	29	12
Pawnshop Employee	0	0	0	0
Property Tax Lender	0	1	3	6
Regulated Lender	18	18	18	7
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	22	56	78	58
Revocation / Suspension Actions				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	0	1	0	1
Motor Vehicle Sales Finance	2	1	2	0
Pawnshop	1	4	0	0
Pawnshop Employee	0	0	0	1
Property Tax Lender	0	0	0	0
Regulated Lender	0	0	1	0
Residential Mortgage Loan Originator	0	0	0	0
Total Revocation / Suspension Actions	3	6	3	2
Application Denial and Protest Actions				
Credit Access Business	0	0	0	0
Motor Vehicle Sales Finance	1	2	3	2
Pawnshop	0	0	0	0
Pawnshop Employee	0	0	0	0
Property Tax Lender	0	0	0	0
Regulated Lender	0	0	0	0
Residential Mortgage Loan Originator	0	0	0	0
Total App. Denial and Protest Actions	1	2	3	2
Total Actions Closed	68	197	270	324

Rule Actions

At the December meeting, the OCCC is presenting the following rule actions:

- Readoption of 7 TAC Chapter 88 (relating to debt management services), as well as proposed amendments to Chapter 88, resulting from rule review
- Proposed amendments to Chapter 85, Subchapter B (relating to crafted precious metal dealers), adjusting registration fees to implement SB 1132 (2021)

In February 2022, the OCCC plans to present the following rule actions:

- Readoption of Chapter 83, Subchapter A (relating to regulated lenders), as well as any proposed amendments to this subchapter, resulting from rule review
- Proposed amendments to Chapter 153 (relating to home equity lending), to amend the definition of “business day”

Litigation

TitleMax of Texas, Inc. v. City of Austin

TitleMax of Texas, Inc. has filed two lawsuits against the City of Austin, challenging the City of Austin’s credit access business (CAB) ordinance. The Austin ordinance contains requirements and limitations for payday or title loans obtained by a CAB, including a limit on the number of installment payments. In May 2020, the City of Austin amended its ordinance to apply to credit services organizations generally, not just to CABs that obtain payday or title loans.

The Houston court of appeals recently issued an opinion in the first *TitleMax of Texas, Inc. v. City of Austin* case (case no. 01-20-00071-CV). In this lawsuit, TitleMax alleges that the Austin ordinance’s requirements for payday and title loans are preempted by state law. In November 2019, a Travis County district court ruled against TitleMax, finding that the court had no jurisdiction to hear TitleMax’s claims (case no. D-1-GN-19-002613). TitleMax appealed the case to the Austin court of appeals, and the case was transferred to the Houston court of appeals. On November 18, 2021, the Houston court of appeals issued an opinion reversing and remanding the case back to the Travis County district court. The court of appeals held that the district court has jurisdiction to hear TitleMax’s claims, because TitleMax has shown a threatened injury to its property rights.

The second *TitleMax* case was recently remanded to the Travis County district court from the Amarillo court of appeals (case no. 07-20-00305-CV). In this lawsuit, TitleMax alleges that the Austin ordinance’s requirements for loans other than payday and title loans are preempted by state law. In October 2020, a Travis County district court ruled against TitleMax, finding that the court had no jurisdiction to hear TitleMax’s claims (case no. D-1-GN-20-003-55). TitleMax appealed the case to the Austin court of appeals, and the case was transferred to the Amarillo court of appeals. On May 11, 2021, the Amarillo court of appeals issued an opinion holding that the district court has jurisdiction to hear TitleMax’s case, and remanded the case back to the Travis County district court. The City of Austin did not appeal the case to the Texas Supreme Court. In August 2021, the Amarillo court of appeals has issued its mandate remanding the case.

Consumer Financial Protection Bureau v. FirstCash, Inc.

On November 12, 2021, the Consumer Financial Protection Bureau filed a federal lawsuit against FirstCash, Inc. and Cash America West, Inc. (case no. 4:21-cv-01251). The CFPB alleges that FirstCash violated the federal Military Lending Act by making pawn loans with APRs over 36% to covered military borrowers in Arizona, Nevada, Utah, and Washington. The CFPB requests that the court enjoin FirstCash from violating the Military Lending Act. The CFPB also seeks damages, restitution, and civil penalties. The CFPB filed its lawsuit in a federal district court in Fort Worth, Texas, where FirstCash is headquartered.

Federal Rulemaking

FTC Safeguards Rule

The Federal Trade Commission's Safeguards Rule requires nondepository financial institutions to keep customer information secure. The rule implements the federal Gramm–Leach–Bliley Act. Currently, the rule requires institutions to develop an information security program, to identify risks in operations, to design and test safeguards, to oversee service providers, and to adjust the program based on monitoring.

On October 27, 2021, the FTC adopted amendments to the Safeguards Rule. Some of the amendments (scheduled to take effect 30 days after publication in the *Federal Register*) will provide more detailed requirements for risk assessments and testing. Other amendments (scheduled to take effect one year after publication) will require institutions to designate a qualified individual responsible for overseeing the security program, to protect customer information by encryption, to develop procedures for disposal of customer information, and to provide personnel with security awareness training. The FTC also proposed additional amendments that would require institutions to report data breaches to the FTC.

Advisory Bulletins

From October 1, 2021 to November 30, 2021, the OCC issued one advisory bulletin. The bulletin describes fee limitations for debt management providers.

Official Interpretation Requests

From October 1, 2021 to November 30, 2021, the OCC did not receive any requests for official interpretations of the Texas Finance Code. As of November 30, 2021, there were no pending requests for official interpretations of the Texas Finance Code.

Public Information Requests

October 1, 2021 through November 30, 2021	
Requests Received	35
Requests Closed	29
Requests Withdrawn	1
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	2.1

Gifts Received by the OCC

From October 1, 2021 to November 30, 2021, the OCC received no gifts.

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 88, and believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission readopt 7 TAC Chapter 88 following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that we readopt 7 TAC Chapter 88 following rule review, because the reasons for the rules continue to exist.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 88. Consumer Debt Management Services

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 88, concerning Consumer Debt Management Services, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 88 was published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6547). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the Office of Consumer Credit Commissioner, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register*.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 88 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers

PURPOSE: The purpose of the amendments to 7 TAC Chapter 85, Subchapter B is to implement SB 1132 (2021) by adjusting annual registration fees for crafted precious metal dealers.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission approve the amendments to 7 TAC Chapter 85, Subchapter B for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC Chapter 85, Subchapter B.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter B. Rules for Crafted Precious Metal Dealers

The Finance Commission of Texas (commission) proposes amendments to §85.1011 (relating to Fees) in 7 TAC, Chapter 85, concerning Pawnshops and Crafted Precious Metal Dealers.

The rules in 7 TAC Chapter 85, Subchapter B govern crafted precious metal dealers. In general, the purpose of the proposed rule changes to 7 TAC §85.1011 is to implement SB 1132 (2021) by adjusting annual registration fees for crafted precious metal dealers.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

The Texas Legislature passed SB 1132 in the 2021 legislative session. SB 1132 amended Texas Occupations Code, Chapter 1956, Subchapter B by adding new Section 1956.06131, which authorizes the OCCC to examine the places of business of crafted precious metal dealers, and requires the OCCC to examine at least 10 dealers each calendar year. SB 1132 also amended Texas Occupations Code, §1956.0612(c), to specify that the OCCC shall prescribe a registration processing fee in an amount necessary to cover the costs of administering Chapter 1956, Subchapter B. The OCCC is responsible for the costs of its operations. Under Texas Finance Code, §16.002 and §16.003, the OCCC is a self-directed, semi-independent agency, and may set fees in

amounts necessary for the purpose of carrying out its functions.

The proposed amendments to §85.1011 would implement SB 1132 by adjusting annual registration fees for crafted precious metal dealers. A proposed amendment to subsection (a) would increase the annual registration fee for permanent locations from \$50 to \$70. A proposed amendment to subsection (b) would increase the annual registration fee for temporary locations from \$25 to \$40.

The OCCC believes that a \$20 increase to registration fees will enable the OCCC to cover the additional costs resulting from examinations of crafted precious metal dealers, as required by SB 1132. The OCCC currently employs financial examiners who examine licensed nondepository financial institutions throughout Texas. To implement SB 1132, some of these examiners will receive training on requirements for crafted precious metal dealers, and will spend a portion of their time traveling and examining dealers. Based on its previous experience in conducting financial examinations, the OCCC anticipates that the new examinations will result in approximately \$19,950 of additional costs for the first year, and approximately \$11,970 of additional costs for subsequent years. Based on an average total number of crafted precious metal dealer registrations of 600, the OCCC anticipates that the \$20 increase would provide \$12,000 of revenue per year to cover the cost of the examination program.

Huffman Lewis, Director of Consumer Protection, has determined that for the first five-year period the proposed rule changes are in effect, there will be fiscal implications for state government as a result of administering the rules. The proposed amendments to §85.1011 would increase annual registration fees for crafted precious metal dealers by \$20. In the last two fiscal years, the average total number of crafted precious metal dealer registrants (including both permanent and temporary locations) has been approximately 600. This suggests that if the proposed rule changes are adopted, the OCCC would receive additional revenue of approximately \$12,000 per year for the first five fiscal years the rule changes are in effect. There is no additional estimated cost to the state as a result of enforcing or administering the rule changes. Any additional costs to the state for examining crafted precious metal dealers would result from the legislative changes in SB 1132 (2021), not from the proposed rule changes. Mr. Lewis has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be that annual registration fees will cover the cost of examining crafted precious metal dealers.

The OCCC anticipates some costs for crafted precious metal dealer registrants required to comply with the rule changes as proposed, due to the adjustments to the annual registration fees in §85.1011. If the proposed changes go into effect, each crafted

precious metal dealer would experience an annual fee increase of \$20 per registered location.

The OCCC anticipates that the proposed rule changes will have some economic impact on small businesses and micro-businesses. Currently, approximately 615 different businesses hold crafted precious metal dealer registrations. The OCCC estimates that all or nearly all of these businesses are small or micro-businesses. If the proposed rule changes are adopted, each business would experience an annual fee increase of \$20 per registered location. The OCCC considered potential alternatives, including a smaller increase and different fee amounts for different registrants. However, the OCCC determined that a smaller increase would not satisfy the statutory objective of ensuring that registration fees cover the cost of administering Texas Occupations Code, Chapter 1956, Subchapter B. In addition, gathering the information necessary to charge different fee amounts for different registrants would impose additional burdens on registrants. The OCCC believes that a \$20 increase is an appropriate way to recover the costs of examining crafted precious metal dealers. The OCCC does not anticipate an adverse economic effect on rural communities apart from other effects described in this paragraph.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does

not receive legislative appropriations. The proposed amendments to §85.1011 require an increase in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would not expand, limit, or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The OCCC does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Occupations Code, §1956.0611, which authorizes the commission to adopt rules to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B. In addition, Texas Occupations Code, §1956.0612(c) (as amended by SB 1132) authorizes the OCCC to prescribe a registration fee in an amount necessary to cover the costs of administering Texas Occupations Code, Chapter 1956, Subchapter B. Texas Finance Code, §16.003(c) authorizes the OCCC to set fees as necessary to carry out its functions.

The statutory provisions affected by the proposal are contained in Texas Occupations Code, Chapter 1956, Subchapter B.

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter B. Rules for Crafted Precious Metal Dealers

Division 1. Registration Procedures

§85.1011. Fees

(a) Fee for permanent registered locations. In connection with a new application or an annual renewal, a crafted precious metal dealer must pay a \$70 [~~\$50~~] fee for each permanent registered location.

(b) Fee for temporary locations. In connection with a new application for a temporary location, a crafted precious metal dealer must pay a \$45 [~~\$25~~] fee for each temporary location.

(c) Amendments to permanent registered location. In order to amend a registration by changing the assumed name of the registrant or relocating a permanent registered location, a crafted precious metal dealer must pay a \$25 fee.

(d) Amendments to temporary location. In order to amend a registration by relocating a temporary location, a crafted precious metal dealer must pay a fee of \$25 for each amended location.

(e) Fees nonrefundable, nontransferable, and not prorated. All fees paid relating to a crafted precious metal dealer's registration with the OCCC are nonrefundable and nontransferable. All fees are fixed and will not be prorated based on the date of the dealer's application.

(f) Nonsufficient funds fee. As provided by Texas Business and Commerce Code,

§3.506, the OCCC may charge a fee for nonsufficient funds if an applicant provides a payment device that is dishonored.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on December 17, 2021.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review

PURPOSE: The purpose of the amendments to 7 TAC Chapter 88 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission approve the amendments to 7 TAC Chapter 88 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC Chapter 88.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 88. Consumer Debt Management Services

The Finance Commission of Texas (commission) proposes amendments to §88.104 (relating to Updating Application and Contact Information), §88.110 (relating to Denial, Suspension, or Revocation Based on Criminal History), §88.202 (relating to Annual Report), §88.304 (relating to Credit Counseling Standards), and §88.306 (relating to Fees for Debt Management Services), in 7 TAC, Chapter 88, concerning Consumer Debt Management Services.

The rules in 7 TAC Chapter 88 govern debt management providers. In general, the purpose of the proposed rule changes to 7 TAC Chapter 88 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 88 was published in the *Texas Register* on October 1, 2021 (46 TexReg 6547). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

Proposed amendments to §88.104 would add a new subsection (b) specifying that debt management registrants must provide certain updated information within 30 calendar days after the registrant has knowledge of a change in the information. The information includes the name or operating name of the registrant, location of any offices, websites, names of principal parties, and criminal history. Current subsection (b) already provides that

registrants are responsible for ensuring that all contact information on file with the OCCC is current and correct, but the current rule does not provide a deadline for providing updated contact information. The proposed new subsection would specify a 30-day deadline for providing update information, similar to other OCCC rules that contain a 30-day deadline for licensees to provide updated contact information. The OCCC requires current and correct information about registrants in order to carry out its responsibilities under Texas Finance Code, Chapter 394.

Proposed amendments to §88.110 relate to the OCCC's review of the criminal history of a debt management applicant or registrant. The OCCC is authorized to review criminal history of debt management applicants and registrants under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109 and §394.204; and Texas Government Code, §411.095. The proposed amendments to §88.110 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf

of an applicant. Proposed amendments throughout subsections (c) and (f) of §88.110 would implement these statutory changes from HB 1342. Other proposed amendments to §88.110 include technical corrections, clarifying changes, and updates to citations.

Proposed amendments to §88.202 would specify information that debt management registrants must submit with annual reports. Proposed amendments throughout §88.202 would add descriptions of information that registrants must provide annually under Texas Finance Code, §394.205 and §394.206, and would add citations to these statutory provisions. These amendments are intended to help registrants comply with reporting requirements by clearly identifying information required by the statute. The proposal would remove current §88.202(b)(2), which requires a registrant to provide a list of all owners and principal parties with the annual report. The OCCC anticipates that this list will no longer be necessary based on the proposed amendments to §88.104 described earlier in this proposal, and believes that removing this list will simplify the reporting process. Proposed new §88.202(d) would specify that the annual report must be verified by oath or affirmation, as required by Texas Finance Code, §394.205(c), and would require registrants to certify that they have reviewed contact information and submitted any updates in accordance with the OCCC's instructions.

A proposed amendment to §88.304(b) would remove language that currently requires providers to submit documentation of the certification of the provider's credit counselors with the annual report. The OCCC believes that removing this requirement will simplify the reporting process. The proposal would maintain current language requiring a

provider to provide this information upon request by the OCCC. The proposal would also replace "commissioner" with "OCCC" in this subsection to ensure consistency with other rules.

Proposed amendments to §88.306 would add citations to statutory limitations on fees for debt management services. Currently, this section states that a provider may not charge for services unrelated to debt management or financial education unless approved by the commissioner. Under Texas Finance Code, §394.210(a), a debt management provider may not charge any fees other than fees that are authorized by Texas Finance Code, §394.210. Proposed new §88.306(a) would include a reference to this statutory section and explain that providers may not impose a fee or other charge except as authorized by the statute. The proposal would remove the phrase "unless approved by the commissioner in advance" from the current rule, because fees for services unrelated to debt management or financial education are not authorized by Texas Finance Code, §394.210. Although the commissioner may authorize certain counseling and education fees under Texas Finance Code, §394.210(d), this does not include fees for unrelated services. Proposed new §88.603(c) would explain that the OCCC will periodically compute and publish adjustments to debt management fees, as provided by Texas Finance Code, §394.2101.

Huffman Lewis, Director of Consumer Protection, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year

of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by registrants required to comply with the rules, will be consistent with legislation recently passed by the legislature, will better enable registrants to comply with Chapter 394 of the Texas Finance Code, and will simplify annual reporting requirements for registrants.

The OCCC does not anticipate economic costs to persons who are required to comply with the rule changes as proposed.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation.

The proposal would expand current §88.104 by specifying that registrants are required to provide certain updated contact information to the OCCC within 30 calendar days of a change. The proposal would limit current §88.110 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history; would limit current §88.202 by removing a requirement to provide a list of all owners and principal parties each year; and would limit current §88.304 by removing a requirement to provide counselor certification documentation each year. The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §394.214(a), which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 394.

Chapter 88. Consumer Debt Management Services

Subchapter A. Registration Procedures

§88.104. Updating Application and Contact Information

(a) Applicant's updates to registered provider application information. Before an application for registration is approved, an applicant must report to the OCCC any information that would require a materially different answer than that given in the original registered provider application and which relates to the qualifications for registration within 14 calendar days after the person has knowledge of the information.

(b) Registrant's updates to registration application information. A registrant must report to the OCCC any information that would require a different answer than that given in the original registration application within 30 calendar days after the registrant has knowledge of the information, if the information relates to any of the following:

(1) the name or any operating name of the registrant;

(2) the location of any additional offices;

(3) the registrant's website address;

(4) the names of principal parties;

(5) criminal history;

(6) actions by regulatory agencies; or

(7) court judgments.

(c) [(b)] Contact information. Each applicant or registered provider is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for registered providers to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§88.110. Denial, Suspension, or Revocation Based on Criminal History

(a) Criminal history record information. After an applicant submits a complete registration application, including all required fingerprints, and pays the fees required by §88.107 of this title (relating to Fees), the OCCC will investigate the applicant. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions;

(2) reliable documents or testimony necessary to make a determination under

subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to registered occupation. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant or registrant has been convicted of an offense that directly relates to the duties and responsibilities of a debt management services provider, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing debt management services involves making representations to consumers regarding the terms of the services, holding money entrusted to the provider, remitting money to third parties, collecting charges in a legal manner, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a registered provider and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or

making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transaction or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a registration, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a registration to engage in the occupation;

(C) the extent to which a registration might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; ~~and~~

(D) the relationship of the crime to the ability or [;] capacity [~~or fitness~~] required to perform the duties and discharge the responsibilities of a registrant; and [-]

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) In determining whether a conviction for a crime renders an applicant or a registrant unfit to be a registrant, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; ~~[and]~~

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) [(F)] evidence of the person's current circumstances relating to fitness to hold a registration, which may include letters of recommendation, ~~[from one or more of the following:]~~

~~[(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(ii) the sheriff or chief of police in the community where the person resides; and]~~

~~[(iii) other persons in contact with the convicted person.]~~

(d) Offenses involving moral turpitude. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant, ~~[or]~~ registrant, or a principal party has been convicted of or found civilly liable for an offense involving moral turpitude, as provided by Texas Finance Code, §394.204(i)(1), (k)(1)-(2). Offenses involving moral turpitude include the following:

(1) forgery;

(2) embezzlement;

(3) obtaining money under false pretenses;

(4) larceny;

(5) extortion;

(6) conspiracy to defraud; and

(7) any other similar offense or violation.

(e) Revocation on imprisonment. A registration will be revoked on the registrant's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of

mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a registration application, or suspend or revoke a registration, based on any other ground authorized by statute, including the following:

~~[(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);]~~

(1) [(2)] a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2)-(3) [§53.021(a)(3)-(4)];

(2) [(3)] errors or incomplete information in the registration application, as provided by Texas Finance Code, §394.204(h);

(3) [(4)] a fact or condition that would have been grounds for denying the registration application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §394.204(k)(1)-(2); and

(4) [(5)] any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §394.204(i)(3), (k)(9).

§88.202. *Annual Report*

(a) General requirement. Each authorized debt management services provider must file an annual report under this section and must comply with all instructions from the OCCC relating to submitting the report.

(b) Annual report. Each year, at the time of annual renewal, an authorized debt management services provider must file with the OCCC, in a form prescribed by the OCCC, a report that contains the following:

(1) if the provider is a nonprofit or tax exempt organization, the assets and liabilities at the beginning and end of the reporting period, as required by Texas Finance Code, §394.205(b)(1);

(2) the total number of debt management plans the provider has initiated on behalf of consumers in Texas during the reporting period, as required by Texas Finance Code, §394.205(b)(2); and

(3) the total and average fees charged to consumers, including all voluntary contributions received from consumers, as required by Texas Finance Code, §394.205(b)(3).

(c) Required documents. A provider must submit the following additional documents with the annual report, in accordance with the OCCC's instructions:

(1) a blank copy of any debt management services agreement used by the provider, as required by Texas Finance Code, §394.205(d) (the OCCC may allow a provider to certify current use of a previously submitted agreement);

(2) blank copies of the provider's consumer educational information, individualized financial analysis, initial debt

management plan, and any other required disclosures relating to credit counseling, as required by Texas Finance Code, §394.205(d) (the OCCC may allow a provider to certify current use of previously submitted information);

(3) a copy of the provider's surety bond or a compliant insurance policy, as required by Texas Finance Code, §394.206(a); and

~~[(1) the information required by Texas Finance Code, §394.205 (the OCCC may allow a provider to certify current use of previously submitted information required by this paragraph);]~~

~~[(2) a list of all owners and principal parties, including any change in ownership that occurred during the preceding calendar year; and]~~

(4) [(3)] information regarding the provider's credit counselors, including the number of credit counselors employed at the time the annual report is prepared, and the accreditation organization or program that certifies the provider's counselors.

(d) Certification. An annual report must be verified by the oath or affirmation of the owner, manager, president, chief executive officer, or chairman of the board of directors of the provider. The provider must certify that the provider has reviewed all contact information and principal party information on file with the OCCC, and has submitted any updates to this information in accordance with the OCCC's instructions.

(e) Other information. ~~[(e)]~~ Upon request by the OCCC, the provider must provide any other information the commissioner deems relevant concerning the provider's business

and operations during the preceding calendar year.

Subchapter C. Operational Requirements

§88.304. Credit Counseling Standards

(a) For purposes of Texas Finance Code, §394.202(2) and §394.208(a)(2), a provider must be accredited by an independent, third-party accreditation organization that covers, at a minimum, competency in the following core areas:

- (1) service environment and planning;
- (2) service accessibility and delivery;
- (3) training and supervision;
- (4) quality management and improvement;
- (5) ethical standards; and
- (6) financial education.

(b) Each provider must provide the name and contact information of the accreditation organization or program that certifies its counselors. The provider must maintain documentation of the certification of the provider's credit counselors, which must be submitted ~~[with the annual report and]~~ upon request by the OCCC ~~[commissioner]~~. The commissioner may issue an order disapproving the accreditation organization or program if the commissioner determines that the organization or program does not provide comprehensive education training on the following:

- (1) alternatives available to resolve an indebted consumer's credit problems;

(2) how to analyze a consumer's current financial condition;

(3) budget development;

(4) money management; and

(5) wise use of credit.

(c) The provider must maintain documentation of individualized counseling and analysis that has been provided under Texas Finance Code, §394.208(a)(2).

§88.306. Fees for Debt Management Services

(a) Limitation on fees. The maximum fees for debt management services are described by Texas Finance Code, §394.210. A provider may not impose a fee or other charge, or receive payment from a consumer or other person on behalf of a consumer, except as allowed under Texas Finance Code, §394.210.

(b) Fees for unrelated services. A provider may not charge a consumer for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt management services or educational services concerning personal finance [~~—unless approved by the commissioner in advance~~].

(c) Adjustment of fee amounts. As provided by Texas Finance Code §394.2101, the OCCC will periodically compute and publish dollar amounts of fees specified in Texas Finance Code, §394.210, to reflect inflation as measured by the Consumer Price Index for All Urban Consumers. These adjustments will be published on the OCCC's website.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on December 17, 2021.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner